R23. Administrative Services, Facilities Construction and Management.

R23-2. Procurement of Architectural and Engineering Services.

R23-2-1. Purpose and Authority.

(1) As provided by Subsection 63-56-14(1), this rule establishes procedures for the procurement of architectural and engineering services by the Division.

(2) The Board's authority to adopt rules for the activities of the Division is set forth in Subsection 63A-5-103(1)(e).

(3) The statutory provisions governing the procurement of architectural and engineering services by the Division are contained in Title 63, Chapter 56 and Title 63A, Chapter 5.

R23-2-2. Definitions.

(1) Terms used in this rule are defined in Section 63-56-5.

(2) In addition:

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Title 63A, Chapter 5, Part 2.

(d) "State" means the State of Utah.

(e) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this rule.

R23-2-3. Maintaining a Register of Architectural/Engineering Firms.

The Division shall maintain a list of all registered and licensed architectural and engineering firms that are interested in being considered for state building projects. This list shall be developed on the basis of expression of interest by the individual firms. It will be updated annually. The information should include:

(1) The name of the firm and the location of all of its offices, specifically indicating the principal place of business within the state;

(2) The age of the firm and its average number of employees over the past five years;

(3) The education, training, and qualifications of members of the firm and key employees;

(4) The experience of the firm, reflecting technical capabilities and project experience;

(5) The names of five clients who may be contacted, including at least two for whom services were rendered in the year immediately preceding the statement;

(6) The scope, categories, or types of work for which the firm considers themselves most qualified and in which they are interested;

(7) Other information that the firm wishes to provide.

R23-2-4. Notification of Need for Architectural/Engineering Services.

(1) The Division shall publish its needs for architectural/engineering services in the manner provided in Subsection R23-1-5(2). The public notice shall include the following:

(a) The closing time and date for the submission of Statement of Qualifications;

(b) The address of the office to which Statements of Qualifications are to be delivered;

(c) The address where a more complete project description may be obtained;

(d) A brief description of the project; and

(e) Notice of any mandatory pre-submittal meetings.

(2) The architects/engineers shall respond with a Statement of Qualifications for each project.

R23-2-5. Appointment of a Selection Committee.

The Director shall appoint a selection committee to review all applications of interested architectural/engineering firms. The committee shall generally include representatives of the Board, the Division and the using agency as appropriate. On projects larger than $5,000,000, the Division shall contact the Board to determine if they wish to participate on the selection committee.

R23-2-6. Preliminary Screening and Evaluation.

(1) The selection committee shall independently rate each interested firm against predetermined criteria. A weighted point system shall be used. A ranking of those qualified firms shall be made by using a composite scoring of all the individual rater's scores.

(2) The following general types of criteria shall be used in the evaluation and ranking of firms for possible awards:

(a) Competence to perform the services as reflected by technical training and education, specialized experience in providing the required services, and the qualifications and competence of persons who would be assigned to perform the services;

(b) Capacity to perform the services in the required time as reflected by present workload, availability of adequate personnel, equipment, and facilities;

(c) Past performance as reflected by the evaluation of the services of the architect/engineer with respect to such factors as control of costs, quality of work, and ability to meet deadlines. This shall specifically include past performance on state projects as rated by the Division as described in Section R23-2-10;

(d) Proximity of firm to the project.

R23-2-7. Interviews with Architectural/Engineering Firms.

(1) On all projects over $5,000,000 in estimated costs for construction, interviews shall be held with no less than the top three ranked firms competing for the project design commission. The number of firms interviewed per project may vary according to the size and complexity of the project and a definite break in ranking of total points. Interviews may be held on smaller projects at the discretion of the Director.

(2) Those firms who are selected to be interviewed shall be provided with as full details as possible of the job at least one week prior to the interview.

(3) The Division may utilize the interview procedure on projects of less than $5,000,000 where it is deemed appropriate.

(4) After the composite ranking and interviews, if held, are completed, the selection committee shall select the top three in

ranked order.

R23-2-8. Negotiation and Appointment.

(1) The Director shall negotiate with the top-ranked architectural or engineering firm. If there are problems with reaching agreement, the Director shall present a written offer of the terms which must then be accepted or rejected in writing by the architectural/engineering firm. If the offer is rejected by the top-ranked firm, the Director may negotiate with the second-ranked firm. If negotiations with the second-ranked firm are not able to be successfully concluded, the Division may negotiate with the third-ranked firm.

(2) Following completion of negotiations, the Division will enter into a contract with the selected firm. Other firms who were interviewed shall receive notification of award.

R23-2-9. Role of the Board.

(1) The Board has the responsibility to establish and monitor the selection process. It must verify the acceptability of the procedure and make changes in procedure as determined necessary by the Board.

(2) At each meeting of the Board, the Division shall submit a list of all architect/engineer contracts entered into and the method of selection used. This shall be for the information of the Board.

R23-2-10. Performance Evaluation.

(1) The using agency and staff from the Division shall, throughout the course of the contract and at the end the contract, evaluate the performance of the architectural/engineering firm.

(2) This rating shall become a part of the record of that architectural/engineering firm within the Division. The Division will be responsible for verbally reviewing with the architectural/engineering firm their performance on each project. The architectural/engineering firm shall be apprised in writing of their performance rating at the end of the project and may enter their response in the file.

R23-2-11. Emergency Conditions.

The Director, in consultation with the chairman of the Board, shall determine if it is necessary to use emergency conditions and document his decision in writing. The Director may use any reasonable method of awarding architect/engineer design contracts in emergency conditions. The capabilities of those firms having a current file with the Division shall be considered first for emergency appointments. However, if the Director determines that a specialization is needed and not found among the firms mentioned, he may appoint another firm whose capabilities are necessary for the emergency project design.

R23-2-12. Direct Awards.

(1) The Director may award a contract to an architectural/engineering firm without following the procedures of this rule if:

(a) The contract is for a project which is integrally related to, or an extension of, a project which was awarded to the architectural/engineering firm;

(b) The architectural/engineering firm performed satisfactorily on the related project; and

(c) The Director determines that the direct award is in the best interests of the State.

(2) The Director shall place written documentation of the reasons for the direct award in the project file and shall report the action to the Board at its next meeting.

R23-2-13. Small Purchases.

(1) If the Director determines that the services of architects and engineers can be procured for less than $50,000, or if the estimated construction cost of the project is less than $500,000, the procedures contained in Subsection R23-2-13(2) may be used.

(2) Before contacting any person to perform the required services, the Director shall examine any current statements of qualifications on file with the Division. Based on this examination, the Director shall contact a qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price. If no current statements of qualifications are on file or if the statements on file are, in the judgment of the Director, inadequate to determine a qualified firm, technical proposals or statements of qualifications shall be solicited. If, after negotiations on price, the parties cannot agree upon a price that, in the Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated at a fair and reasonable price.

R23-2-14. Alternative Procedures.

(1) The Division may enhance the process whenever the Director determines that it would be in the best interest of the state. Examples of enhancements which may be made include design competitions and outside representation on selection committees.

(2) Any exceptions to this rule must be justified to and approved by the Board.

(3) Regardless of the process used, the using agency shall be involved jointly with the Division in the selection process.

KEY: procurement*, architects, engineers
May 8, 1995 63A-5-103 et seq.
Notice of Continuation May 4, 2000 63-56-14(2)

R27. Administrative Services, Fleet Operations.
R27-2. Fleet Operations Adjudicative Proceedings.
R27-2-1. Informal Proceedings.

(1) The following categories of proceedings are hereby designated as informal proceedings under the Utah Administrative Procedures Act, Section 63-46b-4:

(a) Determinations regarding operation of Fleet Operations within state government.

(b) Any agency action not exempted under the Administrative Procedures Act, Section 63-46b-1 et seq.

(2) Procedures governing informal adjudicatory proceedings:

(a) No response need be filed to the notice of agency action or request for agency action.

(b) The agency shall hold a hearing only if a hearing is required by statute, or is permitted by statute and a request for agency action, otherwise, at the discretion of the agency head no hearing will be held.

(c) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(d) A hearing will be held only after timely notice of the hearing has been given.

(e) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information contained in the agency's files and investigatory information and materials not restricted by law.

(f) No person, as defined in the Utah Administrative Procedures Act, Subsection 63-46b-2 (g), may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(g) Any hearing held under this rule is open to all parties.

(h) Within thirty days after the close of any hearing held under this rule, or after the failure of a party to request a hearing, the agency head shall issue a written decision stating the decision, the reasons for the decision, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(i) The agency head's decision shall be based on the facts in the agency file and if a hearing is held, the facts based on evidence presented at the hearing. Decision from the Division may be appealed to the Executive Director of the Department of Administrative Services.

(j) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(k) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order of the agency and may be appealed to the appropriate district court.

KEY: appellate procedures, administrative procedures
July 15, 1996 63A-2-105
Notice of Continuation August 16, 1996 63a-2-101 et seq.

R27. Administrative Services, Fleet Operations.
R27-10. Identification Mark for State Motor Vehicles.
R27-10-1. Authority.

(1) Pursuant to Section 63A-9-401(5), the Department of Administrative Services is responsible for ensuring that state-owned vehicles for all departments, universities and colleges are marked as required by Section 41-1a-407. If "EX" license plates are required, the identification mark is also required, as described herein, for these agencies.

(2) Subsection 63A-9-601(1)(c) requires the Department of Administrative Services to enact rules relating to the size and design of the identification mark.

R27-10-2. Identification Mark.

(1) The identification mark shall be a likeness of the Great Seal of the State of Utah.

(a) Light/Heavy duty trucks, service vehicles and off-road equipment shall be clearly marked, on each front door, with an eight-inch seal. At the option of the entity operating the motor vehicle, the identification mark may include a banner not more than four inches high which may bear the entity's logo and such name of department or division. All identification markings must be approved by the Division of Fleet Operations prior to use.

(b) Non-law enforcement passenger vehicles shall be marked with a translucent identification sticker, four inches in diameter on the furthest rearward window in the lower most rearward corner, on each side of the of the vehicle.

(c) Exemptions to the translucent markings shall be decided by the Director of Fleet Operations on a case by case basis.

(2) An identification mark shall be placed on both sides of the motor vehicle. The required portion of the identification mark (State Seal) shall be placed on in a visible location on each side of the vehicle.

(3) The requirement for the display of the identification mark is not intended to preclude other markings to identify special purpose vehicles.

(4) Vehicles used for law enforcement purposes may, at the discretion of the operating agency, display a likeness of the Great Seal of the State of Utah, worked in the same colors as the identification mark described in Subsection R27-1-2(1), in the center of a gold star for identification purposes. Other emergency response vehicles are not precluded from displaying additional appropriate markings. At the option of the agency, this seal may be placed on the front door above any molding and, where practicable, below the window at least four inches. The optional banner portion of the identification mark shall be placed immediately below the State Seal portion.

(5) It is the intent of these rules that these identification marks clearly identify the vehicles as being the property of the State of Utah. Additional markings should be applied discriminately so as not to detract from that intent.

R27-10-3. License Plates.

(1) Every vehicle owned and operated or leased for the exclusive use of the state shall have placed on it a registration plate displaying the letters "EX." At the option of the Division of Fleet operations, a plate signifying that the vehicle is assigned to the central motor pool may be allowed.

(2) Plates issued to Utah Highway Patrol vehicles may bear the capital letters "UHP," a beehive logo, and the call number of the vehicle for which the plate is issued. In lieu of the identification mark herein described, the Utah Highway Patrol may use a substitute identification mark of its own specification.

R27-10-4. Exceptions.

(1) Neither the "EX" license plates nor the identification marks need be displayed on state-owned motor vehicles if:

(a) the motor vehicle is in the direct service of the Governor, Lieutenant Governor, Attorney General, State Auditor or State Treasurer of Utah;

(b) the motor vehicle is used in official investigative work where secrecy is essential;

(c) the motor vehicle is provided to an official as part of a compensation package allowing unlimited personal use of that vehicle; or

(d) the personal security of the occupants of the vehicle would be jeopardized if the identification mark were in place.

(2) State vehicles which meet the criteria described in Subsection R27-1-4 (1) may be excused from these rules to display the identification mark and "EX" license plates. Exceptions shall be requested in writing from the Executive Director of the Department of Administrative Services and shall continue in force only so long as the use of the vehicle continues.

(3) Exceptions shall expire when vehicles are replaced. New exceptions shall be requested when new vehicles are placed in use.

(4) No motor vehicle required to display "EX" license plates shall be exempt from displaying the identification mark.

R27-10-5. Effective Date.

(1) All motor vehicles obtained or leased for use after the effective date of these rules shall display the prescribed identification mark.

(2) All passenger motor vehicles owned, leased for use or operated by the state, except as herein excepted, shall display an identification mark as required by these rules no later than two years following the effective date of this rule. Special purpose vehicles currently displaying markings other than as prescribed herein may retain such markings until the vehicle bearing them is disposed of.

KEY: motor vehicles

June 1, 2000	**41-1a-407**
Notice of Continuation December 2, 1997	**63A-9-401**
	63A-9-601(1)(c)

R28. Administrative Services, Fleet Operations, Surplus Property.

R28-1. State Surplus Property Disposal.

R28-1-1. Purpose.

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property.

R28-1-2. Authority.

Under the provisions of Title 63A, Chapter 9, Part 8, the Utah State Agency for Surplus Property (USASP) within the Division of Fleet Operations, under the Department of Administrative Services is responsible for operating both a state and a federal surplus property program. The standards and procedures governing the operation of these two programs are found in two separate State Plans of Operation, one for state surplus property and a second plan for federal surplus property, the latter being a contract between the state and federal government. The State Plans of Operation may be reviewed at the USASP.

R28-1-3. Procedures.

A. State-owned personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of without first submitting a properly completed form SP-1 to and receiving authorization from the USASP.

This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

B. When a department or agency of state government determines that state-owned personal property is in excess to current needs, they will make such declaration using Form SP-1. State-owned personal property shall not be processed by the USASP unless the appropriate form is executed.

C. A standard form SP-3 is required when it is determined that state-owned personal property should be abandoned and destroyed. The SP-3 is generated by the USASP after receiving a form SP-1 and reviewing the property being disposed of by the agency.

D. State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency. However, a form SP-1 must still be completed and forwarded to the USASP to account for the transfer of the equipment. In such cases, the USASP will not assess a fee to the donating agency. Similarly, the USASP is authorized to donate computer equipment received as surplus property from agencies to the Utah Correctional Industries (UCI) for refurbishment and upgrade. Subsequent to refurbishing and upgrading, UCI may sale the equipment to public schools. In such cases, the costs associated with refurbishing and upgrading the equipment shall be borne by UCI and subsequent sale to public schools shall be governed by the Department of Corrections.

E. Prior to submitting information technology equipment to Surplus Property, or donating it directly to the public institutions, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.

F. Federal surplus property is not available for sale to the general public, on a day-to-day basis. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program. Public auctions of federal surplus property are authorized under certain circumstances and conditions. The USASP Manager shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are conducted locally, but are regulated and accomplished by a representative of the U.S. General Services Administration.

G. The USASP Manager or designee may make an exception to the written authorization requirement identified in paragraph A above. Exceptions must be for good cause and must consider:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-4. Related Party Transactions.

A. The USASP has a duty to the public to ensure that State-owned surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

B. A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

1. Has purchasing authority.
2. Has maintenance authority.
3. Has disposition or signature authority.
4. Has authority regarding the disposal price.
5. Has access to restricted information.
6. Is perceived to be a related party using other criteria which may prohibit independence.

C. Owning state agencies must list any recommended purchasers on the standard form SP-1 and specify whether they are considered to be a related party.

D. When a prospective purchaser is identified or determined to be a related party, the USASP will employ one of the following procedures:

1. The USASP may require written justification and authorization from the Department or Division Head or authorized agent. Justification may include reference to maintenance history, purchase price and the absence of conflicts of interest. If the related party is an authorized agent, a higher approval may be sought.

2. The USASP may choose to hold the property for sale by public auction or sealed bid. The prospective buyer may then compete against other bidders.

3. The USASP may hold the property for a 30 day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the priorities listed below.

R28-1-5. Priorities.

A. Public agencies are given priority for the purchase of state-owned surplus property.

B. Property received by the USASP that is determined to be unique, in short supply or in high demand by public agencies shall be held for a period of 30 days before being offered for sale to the general public.

C. For this rule, the entities listed below, in priority order, are considered to be public agencies:

1. State Agencies
2. State Universities, Colleges, and Community Colleges
3. Other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies
4. Other tax supported educational entities
5. Non-profit health and educational institutions

D. State-owned personal property that is not purchased by or transferred to public agencies during the 30-day hold period may be offered for public sale.

E. The USASP Manager or designee shall make the determination as to whether property is subject to the 30-day hold period. The decision shall consider the following:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-6. Accounting and Reimbursement.

A. The USASP will record and maintain records of all transactions related to the acquisition and sale of all state and federal surplus property. A summary of the total yearly sales of state surplus by agency or department will be provided to the legislature following the close of each fiscal year.

B. Reimbursements to state agencies from the sale of their surplus property will be made through the Division of Finance on interagency transfers or warrant requests. The Surplus Agency is authorized to deduct operating costs from the selling price of all state surplus property. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

C. Deposits from cash sales will be made to the State Treasurer in accordance with Title 51, Chapter 7.

D. The USASP may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the Surplus Agency accumulates funds in excess of the allowable working capital reserve, they will reduce their service and handling charge to under recover operating expenses and reduce the Retained Earnings balance accordingly. The only exception is where the USASP is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the USASP must obtain the written approval of the Executive Director of the Department of Administrative Services.

R28-1-7. Payment.

A. Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and business or personal checks. Personal checks must be guaranteed with a bank card and may not be accepted for amounts exceeding $200. Unguaranteed personal checks or 2-party checks shall not be accepted.

B. Payment received from state subdivisions shall be in the form of agency or subdivision check.

C. Payment made by public purchasers shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 60 days following the purchase and removal of the property.

D. The USASP Manager or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-8. Bad Debt Collection.

A. If a check from the general public, state subdivisions, or other agencies is returned to the USASP for "insufficient funds", the USASP shall initiate formal collection procedures.

B. The USASP shall initiate the following procedures to collect a bad debt:

1. The debtor may not make any future purchases from the USASP until the debt is paid in full.
2. The USASP shall send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees.
3. The letter shall also state that if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

C. The USASP Director or designee may make exceptions to the collection provisions of this rule for good cause. A good cause exception requires a weighing of:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-9. Public Sales of Surplus Property.

A. State-owned surplus property may be purchased at any time by the general public, subject to any 30-day holding period that may be applicable, as described above.

B. At the discretion of the USASP Manager, any state-owned surplus property may be sold to the general public by auction or sealed bid. Property to be auctioned may be consigned out to an auction service. If a consignment approach is considered, the USASP Manager must ensure that the auction service is contracted by and authorized as a vendor by the Division of Purchasing.

C. Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

D. The frequency of public auctions, for either State-owned or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory at the USASP, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

KEY: state property
June 1, 2000 **63A-9-801**
Notice of Continuation March 19, 1997

R28. Administrative Services, Fleet Operations, Surplus Property.

R28-3. Utah State Agency for Surplus Property Adjudicative Proceedings.

R28-3-1. Purpose.

As required by the Utah Administrative Procedures Act, this rule provides the procedures for adjudicating disputes brought before the Utah State Agency for Surplus Property under the authority granted by Sections 63A-9-801.

R28-3-2. Definitions.

Terms used are as defined in Section 63-46b-2, except "USASP" means the Utah State Agency for Surplus Property, and "superior agency" means the Department of Administrative Services.

R28-3-3. Proceedings to be Informal.

All matters over which the USASP has jurisdiction including bid validity determination and sales issues, which are subject to Title 63, Chapter 46b, will be informal in nature for purposes of adjudication. The Director of the USASP or his designee will be the presiding officer.

R28-3-4. Procedures Governing Informal Adjudicatory Proceedings.

1. No response need be filed to the notice of agency action or request for agency action.

2. The USASP may hold a hearing at the discretion of the USASP director unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

3. Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

4. A hearing will be held only after timely notice of the hearing has been given.

5. No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

6. No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

7. Any hearing held under this rule is open to all parties.

8. Within thirty days after the close of any hearing, the USASP director shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

9. The USASP director's decision shall be based on the facts in the USASP file and if a hearing is held, the facts based on evidence presented at the hearing.

10. The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

11. Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order of the superior agency, and then may be appealed to the appropriate district court.

KEY: surplus property, appellate procedures
1988 63A-9-801
Notice of Continuation November 17, 1998 63-46b

R35. Administrative Services, Records Committee.
R35-2. Declining Appeal Hearings.
R35-2-1. Authority and Purpose.

In accordance with Section 63-2-502 and Subsection 63-2-403(4), Utah Code, this rule establishes the procedure for denial of claims by the executive secretary of the Records Committee.

R35-2-2. Definitions.

In addition to terms defined in Section 63-2-102, Utah Code, the following apply to this rule:

(a) "Executive Secretary" means the individual appointed annually as required in Subsection 63-2-502(3), Utah Code.

(b) "Committee" means the State Records Committee in accordance with Section 63-2-501, Utah Code.

(c) "Hearing" means a meeting by the committee to hear an appeal of a records decision by a government entity in accordance with Section 63-2-403, Utah Code.

R35-2-3. Declining Requests for Hearings.

(a) In order to decline a request for a hearing under Subsection 63-2-403(4), the Executive Secretary shall consult with the chair of the Committee and at least one other member of the Committee as selected by the chair.

(b) The Executive Secretary shall organize and disseminate all relevant information and documents to members of the entire committee, including a copy of the appeal and the previous order of the Committee holding the records series at issue appropriately classified.

(c) The two members of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63-2-402(11)(b), Utah Code. A copy of each decision to deny a hearing shall be signed and retained in the file.

(d) The Executive Secretary's notice to the petitioner indicating that the request for hearing has been denied, as provided for in Subsection 63-2-403(4)(ii), Utah Code, shall include a copy of the previous order of the Committee holding the records series at issue appropriately classified.

(e) The Executive Secretary shall notify the members of the entire Committee each time an appeal hearing is denied. Such notices shall include a copy of the petitioner's appeal and the previous order of the Committee holding the records series at issue appropriately classified. Any Committee member may request that a discussion of the Executive Secretary's decision be placed on the agenda for the next regularly scheduled Committee meeting.

(f) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(g) If a Committee member has requested a discussion to reconsider the decisions to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision of the Executive Secretary and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: (1) whether the records being requested were covered by a previous order of the Committee, and/or (2) whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(h) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held and all hearings declined.

KEY: government documents, state records committee, records appeal hearings
July 16, 1999 63-2-403(4)

R68. Agriculture and Food, Plant Industry.
R68-8. Utah Seed Law.
R68-8-1. Authority.

Promulgated under authority of Sections 4-2-2, 4-16-3 and 4-17-3.

R68-8-2. Noxious Weed Seeds and Weed Seed Restrictions.

It shall be unlawful for any person, firm, or corporation to sell, offer, or expose for sale or distribute in the State of Utah any agricultural, vegetable, flower, tree and shrub seeds, or seeds for sprouting for seeding purposes which:

A. Contain, either in part or in whole, any prohibited noxious weed seeds.

1. "Prohibited" noxious weed seeds are the seeds of any plant determined by Utah Commissioner of Agriculture and Food to be injurious to public health, crops, livestock, land, or other property and which is especially troublesome and difficult to control.

2. Utah prohibited noxious weed seeds are as follows:

TABLE

Bermudagrass (Except in Washington County)	Cynodon dactylon (L.) Pers.
Bindweed (Wild Morning-glory)	Convolvulus spp.
Broad-leaved Peppergrass (Tall Whitetop)	Lepidium latifolium L.
Canada Thistle	Cirsium arvense (L.) Scop.
Diffuse Knapweed	Centaurea diffusa Lam.
Dyers Woad	Isatis Tinctoria L.
Perennial Sorghum spp.	including but not limited to Johnson Grass (Sorghum halepense (L.) Pers.) and Sorghum Almum (Sorghum almum, Parodi).
Leafy Spurge	Euphorbia esula L.
Medusahead	Taeniatherum caput-medusae (L.) Nevski)
Musk Thistle	Carduus nutans L.
Purple Loosestrife	Lythrum salicaria L.
Quackgrass	Agropyron repens (L.) Beauv.
Russian Knapweed	Centaurea repens L.
Scotch Thistle (Cotton Thistle)	Onopordum acanthium L.
Spotted Knapweed	Centaurea maculosa Lam.
Squarrose Knapweed	Centaurea squarrosa Roth.
Whitetop	Cardaria spp.
Yellow Starthistle	Centaurea solstitialis L.

B. Contain any restricted weed seeds in excess of allowable amounts:

1. The following weed seeds shall be allowed in all crop seed, but shall be restricted not to exceed a maximum of 27 such seeds per pound, either as a single species or in combination:

TABLE

Dodder	Cuscuta app.
Halogeton	Halogeton glomeratus (M. Bieb.)
Jointed goatgrass	Aegilops cylindrica (Host.)
Poverty Weed	Iva axillaris Pursh.
Wild Oats	Avena fatua L.

2. The following maximum percentage of weed seeds by weight shall be allowed:

a. Two percent (2.0%) of Cheat (Bromus secalinus), Chess (Bromus brizaformis), (B. commutatus), (B. mollis), Japanese Brome (Bromus japonicus) and Downy Brome (Bromus tectorum) either as a single species or in combination in grass seeds.

b. One percent (1.0%) of any weed seeds not listed in 2.a. above in grass, flower, tree and shrub seeds.

c. One half of one percent (0.50%) in all other kinds or types of seeds.

R68-8-3. Special Labeling Provisions.

A. Prepackaged containers must be labeled in accordance with requirements applying to the specific kind(s) of seed in said prepackaged container as provided by Section 4-16-4.

B. Seed weighed from bulk containers, including jars, cans, bins, etc., in the presence of the customer and sold in quantities of five pounds or less will be exempt from the full labeling provisions; provided, that the container from which the seed is taken is fully and properly labeled in accordance with the provisions of the law and regulations thereunder. Labels on such seed containers must be attached thereto and must be kept in a conspicuous place. The name and address of the supplier or vendor must be plainly printed on all lots of seed sold from bulk containers along with the required labeling and name of substance used in treatment, if any. If the seed was treated, the appropriate treatment labeling must be on both the master container from which the seed is weighed and on each receiving container. The vendor must also mark on any receiving container, when requested by the purchaser, any additional labeling information required by the laws and regulations thereunder.

C. If responsibility is accepted therefore, it shall be permissible under the law for the local merchant or distributor of seed in this State to adopt and use the analysis furnished by the original seller to remain attached to the proper container of such seed for a period not to exceed nine calendar months for vegetable, flower, tree, and shrub seeds and eighteen calendar months for agricultural seeds or in the case of hermetically sealed seed, thirty-six calendar months, after which time said local dealer or distributor must retest or have retested any remaining seed in his possession, remove the original analysis label and attach a new analysis label or place an appropriately printed permanently adhering sticker on the original label bearing the lot number, percent of germination and date of test.

D. Any vegetable or flower seeds in packets or containers of one pound or less and preplanted containers offered, exposed for sale, or distributed in the State of Utah, must be labeled with the date of test or the current calendar year for which the seed is packed.

R68-8-4. Treated Seed - Use of Highly Toxic, Moderately Toxic, and Low Toxicity Substances and Labeling of Containers.

Any agricultural, vegetable, flower, or tree and shrub seed or mixture thereof that has been treated, shall be labeled in type no smaller than eight point to indicate that such seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used to treat such seed. The label shall contain the required information in any form that is clearly legible and complies with Section 4-

16-5, Federal Laws which apply, and the following paragraphs of this regulation which are subsequently applicable. The information may be on the seed analysis tag, on a separate tag, or printed on each container in a conspicuous manner.

A. Names of Substances.

1. The required name of the substance used in treatment shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are not private trademarks and are available for use by the public and are commonly recognized as names of particular substances.

2. Examples of commonly accepted chemical (generic) names are: blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used to represent all types of mercurial compounds. Examples of commonly accepted abbreviated chemical names are BHC (1,2,3,4,5,6, Hexachloroclohexane) and DDT (Dichloro diphenyl trichloroethane).

B. Treatment Coloring.

Any substance which is toxic in nature used in the treatment of seed shall be distinctly colored so as to be readily discernible.

C. Labeling.

Containers of treated seed shall, in addition to the name of the treatment substance used be labeled in accordance with Subsection R68-8-4(C), and shall bear appropriate signal words and warning statements required according to the relative toxicity of the chemical(s) applied. In addition, all seed treated with a chemical seed treatment shall bear the statement, "Keep out of Reach of Children."

1. Labeling Seed Treated with Highly Toxic Substances.

a. Seed treated with a chemical substance, designated by the Environmental Protection Agency or the Commissioner as a highly toxic substance, shall be labeled to conspicuously show the words, "TREATED SEED," together with the name of the substance. Example: "THIS SEED TREATED WITH (name of substance)," or "(name of substance) TREATED". The labeling shall also bear in red coloring the signal words, "DANGER-POISON," and a representation of a skull and crossbones at least twice the size of the type used for the name of the substance. The label shall also include in red letters additional precautionary statements stating hazards to humans and other vertebrate animals, special steps or procedures which should be taken to avoid poisoning, and wording to inform physicians of proper treatment for poisoning.

b. All bags, sacks, or other containers of seed which have been or are being used to contain seeds treated with "highly toxic" substances, shall be identified with the words "DANGER POISON," and a representation of a skull and crossbones. The printing shall be directly printed or impregnated on or into the containers, or applied by other means approved by the department, as to be permanent. Any such container in which seed treated with highly toxic substances has been contained, except for future similar use for seed, shall not again be used to contain any food, feed, or agricultural products, without the prior written approval of the department.

2. Labeling Seed Treated with Moderately Toxic Substances.

Seed treated with a chemical substance designated as moderately toxic, shall be labeled with the words, "TREATED SEED," together with the name of the substance. Examples: "THIS SEED TREATED WITH (name of substance)" or "(name of substance) TREATED." The label shall also bear the signal word, "WARNING". Additional precautionary statements describing hazards to humans and other vertebrate animals, and special handling procedures to avoid poisoning shall also appear in the labeling.

3. Labeling Seed Treated with Low Toxicity Substances.

Seed treated with a chemical designated as low toxicity, or comparatively free from danger shall be labeled with the words, "TREATED SEED" together with the name of the substance. Example: "THIS SEED IS TREATED (name of substance)", or "(name of substance) TREATED." The label shall also bear the signal word, "CAUTION". Additional precautionary statements describing hazards to humans and other vertebrate animals, and special handling procedures to avoid poisoning shall also appear in the labeling.

4. Effective Warning.

Any words or terms used on the label which tend to reduce the effectiveness of the warning statements required by section 4-16-5 and this regulation are construed to be misleading.

5. Bulk Seed.

In the case of seed in bulk, the information required on the labels of packaged seed shall appear on the invoice or other records accompanying and pertaining to such seed.

D. Treatment by Custom Applicators.

The provisions of this regulation shall apply to seed which has been treated by custom applicators, or in a custom manner, even though the transfer of ownership is not intended on said seed.

E. Changes in Federal Law.

The kinds of chemicals declared highly toxic, moderately toxic, or low toxicity and their approved uses on seed must of necessity be in conformity with applicable federal laws and regulations. If at any time the federal government prohibits the use of such substances on seed or makes other changes affecting seed then the provisions of this regulation are considered to be modified to the extent necessary to conform to such federal laws and regulations.

R68-8-5. Inoculated Seed.

The term "inoculant" means a commercial preparation containing nitrogen-fixing bacteria applied to seed. Seed claimed to be inoculated shall be labeled to show the month and year beyond which the inoculant on the seed is no longer claimed to be effective.

R68-8-6. Weight or Seed Count Requirements.

Net weight on all containers is required except that preplanted containers, mats, tapes, or other planting devices shall state the minimum number of seeds in the container. All weight labeling shall be consistent with the requirements of the Weights and Measures Law and rules. Under appropriate circumstances when a seed tag is used, the weight information may appear on the seed tag rather than on the seed bag. The term "weight" shall be understood and construed to mean the net weight of the commodity.

R68-8-7. Labeling of Agricultural Seed Varieties.

A. The following kinds of agricultural seeds shall be labeled to show the variety name or the words, "Variety Not Stated."

Alfalfa
Bahiagrass
Beans, field
Beets, field
Brome, smooth
Broomcorn
Clover, crimson
Clover, red
Clover, white
Corn, field
Corn, pop
Cotton
Cowpea
Crambe
Fescue, tall
Flax
Lespedeza, striate
Millet, foxtail
Millet, pearl
Oat
Pea, field
Peanut
Rice
Rye
Safflower
Sorghum
Sorghum-Sudangrass
Sudangrass hybrid
Soybean
Sudangrass
Sunflower
Tobacco
Trefoil, birdsfoot

B. The following kinds of agriculture seeds shall be labeled to show the variety name:

Barley
Triticale
Wheat, Common
Wheat, durum

C. When two or more varieties are present in excess of five percent and are named on the label, the name of each variety shall be accompanied by the percentage of each.

R68-8-8. Labeling of Lawn Seed Mixtures.

A. Format. When labeling lawn and turf seed mixtures as provided by Section 4-16-4, the following format shall be used:

TABLE

Grass Seed Mixture	
Lot 77-7	
PURE SEED	GERMINATION
42.20% Kentucky Bluegrass	80%
28.37% Annual Ryegrass	85%
11.90% Creeping Red Fescue	85%
5.43% White Dutch Clover	75%
HARD SEED	10%
.50% Weed Seed Tested: July 1979	
1.60% Other crop seed	
10.00% Inert matter	
Noxious weed seed-none	
John Doe Seed Company, Inc.	
1977 Bell Street, Salt Lake City, Utah 84000	
Net Weight: 5 pounds	

B. Agricultural seed other than seed required to be named on the label shall be designated as "other crop seed" or "crop seed." If a mixture contains no crop seed, the statement "contains no other crop seed," may be used.

C. The headings "pure seed" and "germination" or "germ," shall be used in the proper place.

D. The word "mixed" or "mixture" shall be stated with the name of the mixture.

R68-8-9. Vegetable Seeds and Minimum Germination Standards.

A. Vegetable seeds are the seeds of the following, and the minimum germination standards are as indicated:

TABLE

KIND	MINIMUM PERCENT GERMINATION STANDARD
Artichoke--Cynara scolymus	60
Asparagus--Asparagus officinalis	70*
Bean, garden--Phaseolus vulgaris	70*
Bean, asparagus--Vigna sequipedalis	75*
Bean, lima--Phaseolus lunatus var. macrocarpus	70*
Bean, runner--Phaseolus coccineus	75
Beet--Beta vulgaris	65
Broadbean--Vicia fava	75
Broccoli--Brassica oleracea var. botrytis	75
Brussels sprouts--Brassica oleracea var. gemmifera	70
Burdock, great--Arctium lappa	60
Cabbage--Brassica oleracca var. capitata	75
Cabbage, Chinese--Brassica Pekinensis	75
Cabbage, tronchuda--Brassica oleracea var. tronchuda	75
Cantalope (see Muskmelon)	
Cardoon--Cynara cardunculus	60
Carrot--Daucus carota	55
Cauliflower--Brassica oleracea var. botrytis	75
Celery and celeriac--Apium graveolens var. dulce and repaceum	55
Chard, Swiss--Beta vulgaris var. cicla	65
Chicory--Cichorium intybus	65
Chives--Allium schoenoprasum	50
Citron--Citrullus lanatus var. citroides	65
Collards--Brassica oleracea var. acephala	80
Corn, Sweet--Zea mays	75
Cornsalad (Fetticus--Valerianella locusta)	70
Cowpea--Vigna sinensis	75
Cress, garden--lepidium sativum	75
Cress, Upland--Barbarea verna	60
Cress, Water--Rorippa nasturtium-acquaticum	40
Cucumber--Cucumis sativus	80
Dandelion--Taraxacum officinals	60
Eggplant--Solanum melongena	60
Endive--Cichorium endivia	70
Herbs--(all kinds and varieties not listed)	50
Kale--Brassica spp.	75
Kohlrabi--Brassica oleracea var. gongylodes	75
Leek--Allium porrum	60
Lettuce--Lactuca sative	80
Muskmelon (Cantalope)--Cucumis melo	75
Mustard, India--Brassica juncea	75
Mustard, spinach--Brassica perviridis	75
Okra--Hibiscus esculentus	50
Onion--Allium cepa	70
Onion, Welsh--Allium fistulosum	70
Pak-choi--Brassica chinensis	75

Parsley--Petroselinum crispum	60
Parsnip--Pastinaca sativa	60
Pea, garden--Pisum sativum	80*
Pepper--Capsicum spp.	55
Pumpkin--Cucurbita pepo	75
Radish--Raphanus sativus	75
Rhubard--Rheum rhaponticum	60
Rutabaga--Brassica napus var. napobrassica	75
Salsify--Tragapogon porrifolius	75
Sorrel--Rumex spp	65
Soybean--Glycine max. L.	75
Spinach--Spinacia oleracea	60
Spinach, New Zealand--Tetragonia expansa	40
Squash--Cucurbita pepo	75
Tomato--Lycopersicon esculentum	75
Tomato, husk--Physalis spp	50
Turnip--Brassica rapa	80
Watermelon--Citrullus vulgaris	70

*Including hard seeds

R68-8-10. Flower Seeds and Minimum Germination Standards.

The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are therefore required to be labeled in accordance with the germination labeling provisions of Section 4-16-4. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, this percentage is the total percentage of germination and percentage of hard seed.

TABLE

KIND	MINIMUM GERMINATION STANDARDS
Archillea (The Pearl)--Achillea ptarmica	50
African daisy--Dimorphotheca aurantiaca	55
African Violet--Saintpaulia SPP	30
Ageratum--Ageratum mexicanum	60
Agrostemma (rose campion)--Agrostemma coronaria	65
Alyssum-Alyssum compactum, A. maritimum, A. procumbens, A. saxatile	60
Amaranthus--Amaranthus spp.	65
Anagalis (pimpernel)--Anagalis arvensis, Anagalis coerulea, Anagalis grandiflora	60
Anemone--Anemone coronaria, A. pulsatilla	55
Angel's trumpet--Datura arborea	60
Arabis--Arabis alpina	60
Arctotis (African lilac daisy)--Arctotis grandis	45
Armeria--Armeria formosa	55
Asparagus, fern--Asparagus plumosus	50
Asparagus, sprenger--Asparagus sprengeri	55
Aster, China--Callistephus chinensis, except Pompom, Powderpuff and Princess types	55
Aster, China--Callistephus chinensis, Pompom, Powderpuff and Princess types.	50
Aubrietia--Aubrietia deltoides	45
Baby Smilax--Asparagus asparagoides	25
Balsam--Impatiens balsamina	70
Begonia--(Begonia fibrous rooted)	60
Begonia--(Begonia tuberous rooted)	50
Bells of Ireland--Molucella laevis	60
Brachycome (swan river daisy)--Brachycome iberidifolia	60
Browallia--Browallia elata and B speciosa	65
Buphthalmum (willowleaf oxeye)--Buphthalmum salicifolium	60
Calceolaria--Calceolaria spp	60
Calendula--Calendula officinalis	65
California Poppy--Eschscholtzia california	60
Calliopsis--Coreopsis bicolor, C. drummondi, C. elegans	65
Campanula:	60
Cantebury bells--Campanula medium	60
Cup and Saucer bellflower--Campanula calycanthema	60
Carpathian bellflower--Campanula carpatica	50
Peach bellflower--Campanula persicifolia	50
Candytuft, annual--Iberis amara, I. umbellata	65
Candytuft, perennial--Iberis gibraltarica I. sempervirens	55
Caster bean--Richinus communis	60
Cathedral bells--Cobaea scandens	65
Celosis--Celosia argentea	65
Centaurea: Basketflower--Centaurea americana, Cornflower-C. cyanus, Dusty Miller--C. candidissima, Royal centaurea C. imperialis, Sweet Sultan--C. moschata, Velvet centaurea C. gymnocarpa	60
Cerastium (snow in summer)--Cerastium biebersteini and C. tomentosum	65
Chinese forget-me-not--Cynoglossum amabile	55
Chrysanthemum, annual--Chrysanthemum carinatum, C. coronarium, C. segetum	40
Cineraria--Senecio cruentus	60
Clarkia--Clarkia elegans	65
Cleome--Cleome gigantea	65
Coleus--Coleus blumei	65
Columbine--Aquilegia spp	50
Coral Bells--Heuchera sanquinea	55
Coreopsis, perennial--Coreopsis lanceolata	40
Corn, Ornamental--Zea Mays	75
Cosmos: Sensation, Mammoth and Crested type--Cosmos bipinnatus; Klondyke type-C. sulphureus	65
Crossandra--Crossandra infundibuliformis	50
Dahlia--Dahlia spp	55
Daylily--Hemerocallis spp.	45
Delphinium, perennial; Belladonna and Bellamosum types: Cardinal larkspur--Delphinium cardinale; Chinesis types; Pacific Giant, Gold Medal and other hybrids of D. elatum	55
Dianthus:	
Carnation--Dianthus caryophyllus	60
China pinks--Dianthus chinensis, Heddewigi, Heddensis	70
Grass pinks--Dianthus plumarius	60
Maiden pinks--Dianthus deltoides	60
Sweet William--Dianthus barbatus	70
Sweet Wivelsfield--Dianthus allwoodi	60
Didiscus (blue lace flower)--Didiscus coerulea	65
Doronicum (leopard's bane)--Doronicum caucasicum	60
Dracena--Cracena indivisa	55
Dragon Tree--Dracaena Draco	40
English daisy--Bellis perennis	55
Flax, Golden--Linum flavum, Flowering flax L. grandiflorum, perennial flax L. perenne	60
Flowering Maple--Abutilon spp.	35
Foxglove--Digitalis spp	60
Gaillardia, annual--Gallardia pulchella, G. picta; perennial G. grandiflora	45
Gerbera (transvaal daisy)--Gerbera jamesoni	60
Geum--Geum spp	65
Gilia--Gilia spp	65
Gloriosa daisy (rudbeckia) Echinacea purpurea and Rudbeckia hirta	60
Gloxinia--Sinningia speciosa	40
Godetia--Godetia amonea, G. grandiflora	65
Gourds: Yellow flowered--Cucurbita pepo; White flowered Lagenaria sisceraria; Dishcloth-Luffa cylindrica	70
Gypsophila, annual Baby's breath--Gypsophila elegans; perennial Baby's breath-G. paniculata, G. pacifica, G. repens	70
Helenium--Helenium autummale	40
Helichrysum--Helichrysum monstrosum	60
Heliopsis--Heliopsis scabra	55
Heliotrope--Heliotropium spp	35
Helipeterum (Acroclinum)--Helipeterum	60

roseum	
Hesperis (sweet rocket)--Hesperis matronalis	65
Hollyhock--Althea rosea	65*
Hunnemannia (Mexican tulip poppy)--Hunnemannia fumariaefolia	60
Hyacinth bean--Dolichos loblab	70*
Impatiens--Impatiens holstii, I. sultani	55
Ipomea: Cypress vine--Ipomea quamoclit; Moonflower-I. noctiflora; Morning glories, Cardinal climber, Hearts and Honey vine--Ipomea spp	75*
Jerusalem cross (Maltese cross)--Lychnis chalcedonica	70
Job's tears--Ciox lacryma-jobi	70
Kochia (Mexican fire bush)--Kochia childsii	55
Larkspur, annual--Delphinium ajacia	60
Lantana--Lantana camara, L. hybrida	35
Lilium (regal lily)--Lilium regale	50
Linaria--Linaria spp	65
Lobelia--Lobelia erinus	65
Lunaria, honesty--Lunaria annua	65
Lupine--Lupinus spp	65*
Marigold--Tagetes spp	65
Marvel of Peru (Four-O'clock)--Mirabilis jalapa	60
Matricaria (feverfew)--Matricaria spp	60
Migonette--Reseda odorata	55
Myosotis--Myosotis alpestris, M. oblongata, M. pulastris	50
Nasturtium--Tropeaolum spp	60
Nemesia--Nemesia spp	65
Nemophila--Nemophila insignis	70
Nemophila, spotted--Nemophila maculata	60
Nicotiana--Nicotiana affinis, N. sanderae, N. sylvestris	65
Nierembergia--Nierembergia spp	55
Nigella--Nigella damascena	55
Pansy--Viola tricolor	60
Penstemon--Penstemon barbatus, P. grandiflorus, P. laevigatus, P. pupescens	60
Petunia--Petunia spp	45
Phacelia--Phacelia campanularia, P. minor, P. tanacetifolia	65
Phlox, annual--Phlox drummondii all types and varieties	55
Physalis--Physalis spp	60
Plantycodon (balloon flower)--Platycodon grandiflorum	60
Plumbago, cape--Plumbago capensis	50
Ponytail--Beaucarnea Recurvata	40
Poppy: Shirley poppy--Papaver rhoeas, Iceland poppy P. nudicaule, Oriental poppy-P. orientale, Tulip poppy P. glaucum	60
Portulaca--Portulaca grandiflora	65
Primula (primrose)--Primula spp	50
Pyrethrum (painted daisy)--Pyrethrum coccineum	60
Salpiglossis--Salpigloss's gloxinaeflora, S. sinuata	60
Salvia--Scarlet Sage--Salvia spendens, Mealycup Sage (blue bedder)--Salvia farinacea	50
Saponaria--Saponaria ocymoides, S. vaccaria	60
Scabiosa, annual--Scabiosa atropurpurea	50
Scabiosa, perennial--Scabiosa caucasica	40
Scizanthus--Schizanthus spp	60
Sensitive plant (mimosa)--Mimosa pudica	65*
Shasta Daisy-Chrysanthemum maximum, C. leucanthemum	65
Silk Oak--Grevillea Robusta	25
Snapdragon--Antirrhinum spp	55
Solanum--Solanum spp	60
Statice--Statice sinuata S. suworowii (flower heads)	50
Stocks: Common--Matthiola incana, Evening Scented-Matthiola bicornis	65
Sunflower--Helianthus spp	65
Sunrose--Helianthemum spp	30
Sweet pea, annual and perennial other than dwarf bush-Lathyrus odoratus, L. latifolius	75*
Sweet pea, dwarf bush--Lathyrus odoratus	65*
Tahoka daisy--Machacanthera tanacetifolia	60
Thunbergia--Thunbergia alata	60
Torch flower--Tithonia speciosa	70
Torenia (wishbone flower)--Torenia fournieri	70
Tritoma--Kniphofia spp	65
Verbena, annual--Verbena hybrida	35
Vinca (periwinkle)--Vinca rosea	60
Viola--Viola carnuta	55
Virginian stocks--Malcolmia maritima	65
Wallflower--Cheiranthus allioni, C. cheiri	65
Yucca (Adamsneedle)--Yucca filamentosa	50
Zinnia (except linearis and creeping)--	
Zinnia augustifolia, Z. elegans, Z. grandifloria, Z. gracillima, Z. haageana, Z. multiflora, Z. pumila	65
Zinnia, linearis and creeping--Zinnia linearis, Sanvitalia procumbens	50
All other kinds	50

* Including hard seeds

R68-8-11. Labeling of Flower Seeds.

Flower seeds shall be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by Section 4-16-4.

A. Seeds of Plants Grown Primarily for Their Blooms.

1. Single Name. Seeds of a single name variety shall be labeled to show the kind and variety name. For example: "Marigold, Butterball."

2. Single Type and Color. Seeds of a single type and color for which there is no special variety name shall be labeled to show either the type of plant or the type of color of bloom. For example: "Scabiosa, Tall, Large Flowered, Double, Pink."

3. Assortment of Colors. Seeds consisting of an assortment of mixture of colors or varieties of a single kind shall be labeled to show the kind name, the type of plant, and the types of bloom. In addition, it shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is-"Marigold, Dwarf, Double French, Mixed colors."

4. Assortment of Kinds. Seeds consisting of an assortment of mixture of kinds shall be labeled to clearly indicate that the seed is assorted or mixed and the specific use of the assortment of mixture shall be indicated. For example: "Cut Flower Mixture," or "Rock Garden Mixture." Such statements as "Wild Flower Mixture," "General Purpose Mixture," "Wonder Mixture," or any other statement which fails to indicate the specific use of the seed shall not meet the requirements of this provision unless the specific use of the mixture is also stated.

B. Seeds of Plants Grown for Ornamental Purposes Other Than Their Blooms. Seeds of plants grown for ornamental purposes other than their blooms shall be labeled to show the kind and variety, or the kind together with a descriptive statement concerning the ornamental part of the plant. For example: "Ornamental Gourds, Small Fruited, Mixed."

R68-8-12. Application of Germination Standards to Mixtures of Kinds of Flower Seeds.

A mixture of kinds of flower seeds will be considered to be below standard if the germination of any kind or combination of kinds constituting 25 % or more of the mixture by number is below standard for the kind or kinds.

R68-8-13. Tree and Shrub Seed Labeling.

The information in the following example shall be used for

all tree and shrub seeds for which standard testing procedures are prescribed.

TABLE

Common Name:		Lot#:
Genus:		Species:
Origin: State:	County:	Elevation:
Date Collected or Tested:	Month:	Year:
Pure Seed: %	Weed Seed: %	Inert Matter:
Other crop seed:	% Germination: %	Hard Seed:
Net Weight:		
Name:		
Address:		

If the kind of seed to be labeled is not one for which standard testing procedures are prescribed, the information on germination and hard seeds may be omitted from the example shown above.

R68-8-14. Hermetically Sealed Seed Containers.

The 36-month provision on the date of test in Section 4-16-5 will apply to hermetically sealed agricultural and vegetable seed when the following conditions have been met:

A. The seed was packaged within nine months after harvest.

B. The container used does not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100 degrees F. with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration (WVP) is measured by the standards adopted by the U. S. Bureau of Standards as: WVP=gm H_2O/24 hr./100 sq. in./100 degrees F./90% RHV. 0%RH

C. The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as listed below:

TABLE

1. AGRICULTURAL SEEDS	PERCENT
Beet, field	7.5
Beet, sugar	7.5
Bluegrass, Kentucky	6.0
Clover, Crimson	8.0
Fescue, Red	8.0
Ryegrass perennial	8.0
All other agricultural seed	6.0
Mixtures of above	8.0

2. VEGETABLE SEEDS	PERCENT
Bean, garden	7.0
Bean, lima	7.0
Beet	7.5
Broccoli	5.0
Brussel sprouts	5.0
Cabbage	5.0
Carrots	7.0
Cauliflower	5.0
Celeriac	7.0
Celery	7.0
Chard, Swiss	7.5
Chinese cabbage	5.0
Chives	6.5
Collards	5.0
Corn, sweet	8.0
Cucumber	6.0
Eggplant	6.0
Kale	5.0
Kohlrabi	5.0
Leek	6.5
Lettuce	5.5
Muskmelon	6.0
Mustard, India	5.0
Onion	6.5
Onion, Welsh	6.5
Parsley	6.0
Parsnip	6.0
Pea	7.0
Pepper	4.5
Pumpkin	6.0
Radish	5.0
Rutabaga	5.0
Spinach	8.0
Squash	6.0
Tomato	5.5
Turnip	5.0
Watermelon	6.5
All other vegetable seed	6.0

D. The container is conspicuously labeled in not less than eight point type to indicate:

1. That the container is hermetically sealed.

2. That the seed has been preconditioned as to moisture content, and

3. The calendar month and year in which the germination test was completed.

E. The percentage of germination of the vegetable seed at the time of packaging was equal to or above the standards specified in Section R68-8-9.

R68-8-15. Rules for Seed Testing.

Rules for testing seeds shall be the same as those found in the current "Rules For Testing Seeds" recommended by the Association of Official Seed Analysts. For seeds not listed in the "Rules for Testing Seed," procedures for testing shall be determined by the State Seed Analyst based upon the most authoritative seed testing information available. For seed not listed in the "Rules for Testing Seeds," procedures for testing shall be determined by the State Seed Analyst based upon the most authoritative seed testing information available. Utah Department of Agriculture and Food has a copy of the "Rules for Testing Seeds", on file in the Seed Laboratory.

R68-8-16. Labeling of Chemical Tests for Viability (Tetrazolium).

The results of tetrazolium tests performed in accordance with the current "Rules For Testing Seeds" of the Association of Official Seed Analysts shall be recognized for labeling purposes.

R68-8-17. Labeling of Seed Distributed to Wholesalers.

A wholesaler, whose predominant business is to supply seed to other distributors rather than to consumers, shall label seed as follows:

A. Containers. If the seed is in containers, the information required in Section 4-16-4 need not be shown on each container provided, that:

1. The lot designation is shown on an attached label or by stenciling or printing on container.

2. The required information for labeling accompanies such shipment.

B. Bulk. In the case of seed in bulk, the information required in Section 4-16-4 shall appear in the invoice or other records accompanying and pertaining to such seed.

R68-8-18. Inspector's Duties.

It shall be the duty of the District Agricultural Inspectors,

either in person or by deputy, to quarantine any lots of seed which contain weed seeds in violation of current regulations of the Department of Agriculture and Food. Such seed may be recleaned under the supervision of any official representative of the Utah State Department of Agriculture and Food, and if found to meet the requirements of the current regulations of the Department of Agriculture and Food with respect to weed seed content, the same may be released for distribution, otherwise, such seed will be destroyed. It shall be the duty of the District Agricultural Inspectors, either in person or by deputy, to quarantine any lots of seed which do not comply with the labeling provisions of Section 4-16-4, and Section R68-8. Such seeds shall remain quarantined and shall not be offered for sale until they are properly labeled to meet the above requirements.

R68-8-19. Sampling.

A. General Procedure

1. In order to secure a representative sample, equal portions shall be taken from evenly distributed parts of the quantity of seed or screenings to be sampled. Access shall be had to all parts of that quantity.

2. For free-flowing seed in bags or bulk, a probe or trier shall be used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag shall be used.

3. Non-free-flowing seed, such as certain grass seed, uncleaned seed, or screenings which are difficult to sample with a probe or trier, shall be sampled by thrusting the hand into the bulk and withdrawing representative portions.

4. The portions shall be combined into a composite sample or samples.

5. As the seed or screening is sampled, each portion shall be examined and whenever there appears to be lack of uniformity, additional samples shall be taken to show such lack of uniformity as may exist.

B. Bulk. Bulk seeds or screenings shall be sampled by inserting a probe or thrusting the hand into the bulk, as circumstances require, to obtain a composite sample of at least as many cores or handfuls of seed or screenings as if the same quantity were in bags of an ordinary size. The cores or handfuls of seed which comprise the composite sample shall be taken from well distributed points throughout the bulk.

C. Bags.

1. In quantities of six bags or less, each bag shall be sampled.

2. In quantities of more than six bags, five bags plus at least 10% of the number of bags in the lot shall be sampled, rounding numbers with decimals to the nearest whole number. Regardless of the lot size, it is not necessary to sample more than thirty bags. Example:

TABLE

No. Bags in Lot	7	10	23	50	100	200	300	400
No. Bags to Sample	6	6	7	10	15	25	30	30

3. Samples shall be drawn from unopened bags except under circumstances where the identity of the seed has been preserved.

D. Small Containers. Seed in small containers shall be sampled by taking the entire unopened containers in sufficient number to supply a minimum size sample as required in Subsection R68-8-19(E). The contents of a single container or the combined contents of multiple containers of the same lot shall be considered representative of the entire lot of seed sampled.

E. Size of Samples. The following are minimum weights of samples of seed to be submitted for analysis, test, or examination:

1. Grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these - two ounces (approximately 55 grams).

2. Alfalfa, bromegrasses, crimson or red clover, flax, lespedezas, millet, rape, ryegrass or seeds of similar size - five ounces (approximately 150 grams).

3. Proso, sudangrass, or seeds of similar size - one pound. (Approximately 500 grams).

4. Cereals, sorghums, vetches or seeds of similar or larger size - two pounds (approximately 1000 grams).

5. Vegetable and flower seed - at least 400 seeds per sample.

6. Tree and shrub seed - at least 600 seeds per sample for germination purposes. If a purity or noxious-weed seed examination is required, the amount of sample shall be at least the size of that required for seeds of similar size in Subsections R68-8-19(E)(1), (2), (3), and (4).

7. Screenings - two quarts.

R68-8-20. Records.

The term "Complete Records," as it pertains to Section 4-16-11, shall be construed to mean information which relates to origin, germination, purity, variety, and treatment of each lot of seed transported or delivered for transportation within this State. Such information shall include seed samples and records of declaration, labels, purchases, sales, cleaning, bulking, handling, storage, analysis, tests, and examinations. The complete record kept by each person for each lot of seed consists of the information pertaining to his own transactions and the information received from others pertaining to their transactions with respect to each lot of seed.

R68-8-21. Advertising.

The name of a kind or kind and variety of seed and any descriptive terms pertaining thereto shall be correctly represented in any advertisement of seed.

A. Name of Kind or Kind and Variety. The representation of the name of a kind or kind and variety of seed in any advertisement subject to the act shall be confirmed to the name of the kind or kind and variety determined in accordance with Section 4-16-2 associated with words or terms that create a misleading impression as to the history or characteristics of the kind or kind and variety. Descriptive terms and firm names may be used in kind and variety names; provided, that the descriptive terms or firm names are a part of the kind or variety of seed; for example, Stringless Green Pod, Detroit Dark Red, Black Seed Simpson, and Henderson Bush Lima. Seed shall not be designated as hybrid seed in any advertisement subject to the act unless it comes within the definition of "Hybrid" in Section 4-16-2.

B. Characteristics of Kind or Variety. Terms descriptive

as to color, shape, size, habit of growth, disease resistance, or other characteristics of the kind or variety, may be associated with the name of the kind or variety; provided, that it is done in a manner which clearly indicates the descriptive term is not part of the name of the kind or variety; for example, Oshkosh pepper (yellow) Copenhagen Market (round head) cabbage, and Kentucky Wonder pole bean.

C. Description of Quality and Origin. Terms descriptive of quality or origin and terms descriptive of the basis for representations made may be associated with the name of the kind or variety of seed; provided, that the terms are clearly identified as being other than part of the name of the kind or variety; for example: Blue Tag Gem Barley, Idaho Origin Alfalfa, and Grower's Affidavit of Variety Atlas Sorghum.

D. Description of Manner of Production or Processing. Terms descriptive of the manner or method of production or processing the seed may be associated with the name of the kind or variety of seed, providing such terms are not misleading.

E. Separation of Brand Names from Kind and Variety Names. Brand names and terms taken from trademarks may be associated with the name of the kind and variety or mixtures of kinds or blends of varieties of seed as an indication of source; provided, that the terms are clearly indicated as being other than part of the name of the kind and variety, mixture or blend. For example: Valley Brand Blend 15 Alfalfa, or River Brand Golden Cross Corn.

R68-8-22. Seed Screenings.

It shall be unlawful for any person, company, or corporation to sell, offer for sale, barter, give away, or otherwise dispose of any screenings containing more than 6 whole prohibited noxious weed seeds per pound and/or more than 27 whole restricted weed seeds per pound; except that screenings containing such seeds may be moved or sold to a mill or plant for processing in such a manner which will reduce the number of whole weed seeds to within the above stated tolerances. Each container or shipment of screenings shall be labeled with the words "Screenings for Processing - Not For Seeding or Feeding" and with the name and address of the consignor and consignee.

R68-8-23. Fees For Testing Services.

Charges for testing samples, representing seed sold or offered for sale in Utah, or other services performed by the state seed laboratory, shall be determined by the department pursuant to Subsection 4-2-2(2). A current listing of approved fees may be obtained upon request from Utah State Department of Agriculture and Food.

KEY: inspections

May 30, 2000	**4-2-2**
Notice of Continuation January 6, 1997	**4-16-3**
	4-17-3

R151. Commerce, Administration.

R151-46b. Department of Commerce Administrative Procedures Act Rules.

R151-46b-1. Title.

These rules are known as the "Department of Commerce Administrative Procedures Act Rules."

R151-46b-2. Definitions.

In addition to the definitions in Title 63, Chapter 46b, Administrative Procedures Act, which apply to these rules:

(1) "Agency head" means the executive director of the department, the director of a division, or the administrative secretary of the committee, respectively, as used in context.

(2) "Applicant" means a person who submits an application.

(3) "Application" means a request for licensure, certification, registration, permit, or other right or authority granted by the department.

(4) "Committee" means the Committee of Consumer Services of the department.

(5) "Department" means the department, a division, or the committee, respectively or collectively, as used in context.

(6) "Division" means a division of the department.

(7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.

(8) "Motion" means a request for any action or relief submitted to the presiding officer in an adjudicative proceeding.

(9) "Petition" means the charging document, typically incorporated by reference into a notice of agency action, setting forth a statement of jurisdiction, statement of allegations, statement of legal authority, and prayer for relief.

(10) "Pleadings" include the notice of agency action or request for agency action, any response filed thereto, the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding, any request for agency review or agency reconsideration, any response filed thereto, and any motions, briefs or other documents filed by the parties on agency review.

(11) "Record" means the record of a hearing in an adjudicative proceeding or the record of the entire adjudicative proceeding, as used in context.

R151-46b-3. Authority - Purpose.

These rules are adopted by the department under the authority of Subsection 63-46b-1(6) and Section 13-1-6 to define, clarify, or establish the procedures which govern adjudicative proceedings before the department.

R151-46b-4. Supplementing Provisions of Rule R151-46b.

Any provision of these rules may be supplemented by division or committee rules unless expressly prohibited by these rules.

R151-46b-5. General Provisions.

(1) Liberal Construction.

These rules shall be liberally construed to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) Deviation from Rules.

The presiding officer may permit or require a deviation from these rules upon a determination that compliance therewith is impractical or unnecessary.

(3) Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law thereunder may be looked to as persuasive authority upon these rules, but shall not, except as otherwise provided by Title 63, Chapter 46b, Administrative Procedures Act, or by these rules, be considered controlling authority.

(4) Computation of Time.

(a) Periods of time prescribed or allowed by these rules, by any applicable statute or by an order of a presiding officer shall be computed as to exclude the first day of the act, event, or default from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him and service is by mail, three days shall be added to the prescribed period.

(b) For good cause shown, the presiding officer may extend a time period under these rules on his own motion or upon application from either party.

(5) Extension of Time; Continuance of Hearing.

When a statute, or these rules, authorizes the presiding officer to extend a time period or grant a continuance of a hearing, the presiding officer shall consider the following factors, and such other factors as may be appropriate, in determining whether to grant such extension or continuance:

(a) whether there is good cause for granting the extension or continuance;

(b) the number of extensions or continuances the requesting party has already received;

(c) whether the extension or continuance will work a significant hardship upon the other party;

(d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(e) whether the other party objects to the extension or continuance.

(6) Conflict.

In the event of a conflict between these rules and any statutory provision, the statute shall govern.

(7) Necessity of Compliance with GRAMA.

To the extent that the Utah Government Records Access and Management Act ("GRAMA") would impose a restriction on the ability of a party to disclose any record which would otherwise have to be disclosed under these rules, such record shall not be disclosed except upon compliance with the requirements of that Act.

R151-46b-6. Representation of Parties.

A party may represent himself individually, or if not an individual, may represent itself through an officer or employee, or may be represented by counsel.

R151-46b-7. Pleadings.

(1) Docket Number and Title.

The department shall assign a docket number to each notice of agency action and request for agency action. The docket number shall consist of a letter code identifying the division or committee in which the matter originated (CORP-Corporations; CP-Consumer Protection; CCS-Committee of Consumer Services; DOPL-Occupational and Professional Licensing; RE-Real Estate, AP-Real Estate Appraisers; SEC-Securities), a numerical code indicating the year the matter arose, and another number indicating chronological position among notices of agency action or requests for agency action filed during the year. The department shall give each adjudicative proceeding a title which shall be in substantially the following form:

TABLE I

BEFORE THE (DIVISION/COMMITTEE)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of	(Notice of Agency Action)
(the application,	(Request for Agency Action)
petition or license	
of John Doe)	No. AA-2000-001

(2) Content and Size of Pleadings.

Pleadings shall be double-spaced, typewritten and presented on standard 8 1/2 x 11 inch white paper. Pleadings shall contain a clear and concise statement of the allegations or facts relied upon as the basis for the pleading, together with an appropriate prayer for relief when relief is sought.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Amendments to Pleadings.

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend a pleading only by leave of the presiding officer or by written consent of the adverse party. Leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be longer, unless the presiding officer otherwise orders. Defects in a pleading which do not affect substantial rights of a party need not be amended and shall be disregarded.

(5) Response to a Notice of Agency Action.

(a) Formal Adjudicative Proceedings.

In accordance with Subsection 63-46b-3(2)(a)(vi), a respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(b) Informal Adjudicative Proceedings.

(i) In accordance with Subsection 63-46b-5(1)(a), a respondent in an informal adjudicative proceeding may file, but is not required to file except as provided in Subsection (ii), a response to a notice of agency action.

(ii) The presiding officer may, upon a determination of good cause, require a person against whom an informal adjudicative proceeding has been initiated to submit a response by so ordering in the notice of agency action or the notice of receipt of request for agency action.

(c) Time Period for Filing a Response.

Unless a different date is established by law, rule, or by the presiding officer, a response to a notice of agency action or a notice of receipt of request for agency action shall be filed within 30 days of the mailing date of the notice.

(6) Motions.

(a) General. Any motion which is relevant to an adjudicative proceeding and is timely may be filed. All motions shall be filed in writing, unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing. Subsection 63-46b-1(4)(b) shall not be construed to prohibit a presiding officer from granting a timely motion to dismiss for failure to prosecute, failure to comply with these rules, failure to establish a claim upon which relief may be granted, or any other good cause basis.

(b) Time for Filing Motions to Dismiss.

Any motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading if such a pleading is permitted unless the presiding officer allows additional time upon a determination of good cause.

(c) Memoranda and Affidavits.

The presiding officer shall permit and may require memoranda and affidavits in support or contravention of a motion. Unless otherwise governed by a scheduling order issued by the presiding officer, any memorandum or affidavits in support of a motion shall be filed concurrently with the motion, any memorandum or affidavits in response to a motion shall be filed no later than ten days after service of the motion, and any final reply shall be filed no later than five days after service of the response.

(d) Oral Argument.

The presiding officer may permit or require oral argument on a motion.

R151-46b-8. Filing and Service.

(1) Filing.

Pleadings shall be filed with the division or committee in which the adjudicative proceeding is being conducted. If an administrative law judge is conducting part of the adjudicative proceeding, then the party shall cause a courtesy copy of such pleadings to be filed with the administrative law judge. The filing of discovery documents is governed by Subsection R151-46b-9(11)(a).

(2) Service.

Pleadings filed by the parties and documents issued by the presiding officer shall be served upon the parties to the adjudicative proceeding concurrently with the filing or issuance thereof. The party who files the pleading shall be responsible for service of the pleading. The presiding officer who issues a document shall be responsible for service of the document.

(a) Service may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the agent of the person being served. If a party is represented by an attorney, service may be made upon the attorney.

(b) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(c) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to):

(Name(s) of parties of record)
(Address(es))

Dated this (day) day of (month), (year).

(Signature)
(Title)

R151-46b-9. Discovery - Formal Proceedings Only.

This rule applies only to formal adjudicative proceedings. Discovery is prohibited in informal adjudicative proceedings.

(1) Scope of discovery.

(a) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.

(b) Subject to the provisions of Subsections R151-46b-9(1)(c) and R151-46b-9(3)(a), a party may obtain discovery of documents and tangible things otherwise discoverable under Subsection R151-46b-9(1)(a) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including his attorney, consultant, insurer or other agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(c) Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Subsection R151-46b-9(1)(a) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by Subsection R151-46b-9(3)(a).

(2) Disclosures Required By Initial Prehearing Order.

(a) Pursuant to the initial prehearing order issued in accordance with Subsection R151-46b-9(9)(c), the presiding officer may require each party to disclose:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, identifying the subjects of the information; and

(ii) a copy of, or a description by category and location of, and reasonable access to, all discoverable documents, data compilations, and tangible things which are in its possession, custody, or control and which support its claims or defenses.

(b) The order shall not require disclosure of expert testimony, which is governed by Subsection R151-46b-9(3)(a). The order also shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(c) The disclosures required by Subsection R151-46b-9(2)(a) shall be made within 14 days after the written initial prehearing order is issued unless that order provides otherwise. A party joined after the initial prehearing conference shall make these disclosures within 30 days after being served unless otherwise stipulated by the parties or ordered by the presiding officer. A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

(3) Disclosures Otherwise Required.

(a) Expert Testimony.

A party shall disclose the name, address and telephone number of any person who may be called as an expert witness at the hearing.

(i) Except as otherwise stipulated by the parties or ordered by the presiding officer, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(ii) Unless otherwise stipulated by the parties or ordered by the presiding officer, the disclosures required by Subsection R151-46b-9(3)(a) shall be made within 30 days after the expiration of discovery as provided by Subsection R151-46b-9(7)(b) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Subsection R151-46b-9(3)(a)(i), within 60 days after the disclosure made by the other party.

(b) Prehearing Disclosures.

In addition to the disclosures required pursuant to Subsection R151-46b-9(3)(a), a party shall disclose the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(i) the name and, if not previously provided, the address and telephone number of each witness, including the general scope of their anticipated testimony, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(ii) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(iii) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

These disclosures shall be made at least 30 days before the hearing unless otherwise ordered by the presiding officer. A party may serve and file any objection to the use under Subsection R151-46b-9(13)(i) of a deposition designated by another party under Subsection R151-46b-9(3)(b)(ii) and any objection, together with the grounds therefor, as to the admissibility of materials identified under Subsection R151-46b-9(3)(b)(iii). Any such objections shall be made within 14 days after service of the disclosures required by Subsection R151-46b-9(3)(b) unless a different time is specified by the presiding officer. Objections not timely made under this Subsection, other than objections on grounds of relevancy, shall be deemed waived unless excused by the presiding officer for good cause shown.

(c) Form of Disclosures.

Unless otherwise stipulated by the parties or ordered by the presiding officer, all disclosures under Subsections R151-46b-9(2) through (3)(b) shall be made in writing, signed and served.

(4) Other Discovery Methods.

Parties may also obtain discovery by one or more of the following methods: depositions upon oral examination as provided in these rules, production of documents or things, permission to enter upon land or other property for inspection and other purposes, and physical and mental examinations.

(5) Limits on Use of Discovery.

The frequency and extent of use of the discovery methods set forth in Subsection R151-46b-9(4) shall be limited by the presiding officer if it is determined that:

(a) the discovery sought is unreasonably cumulative, duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(b) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(c) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The presiding officer may act on his own motion after reasonable notice or pursuant to a motion under Subsection R151-46b-9(6).

(6) Protective Orders.

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) the certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the presiding officer;

(f) that a deposition after being sealed be opened only by order of the presiding officer;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(7) Timing, Completion and Sequence of Discovery.

(a) A party may not use any of the discovery methods described in Subsection R151-46b-9(4) prior to the date that the disclosures required in the initial prehearing order are received unless otherwise stipulated by the parties or ordered by the presiding officer. If the initial prehearing order does not require the parties to make disclosures, then the parties may use those discovery methods at any time after the date of the initial prehearing conference.

(b) Unless otherwise stipulated by the parties or ordered by the presiding officer for good cause shown, all discovery, except for prehearing disclosures governed by Subsection R151-46b-9(3), shall be completed within 120 days after the date of the initial prehearing conference. Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to shorten this time period include whether that party's interests will be prejudiced if the time period is not shortened, whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time, and whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened. Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-46b-5(5), whether the complexity of the case warrants additional discovery time, and whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(c) Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, and except as otherwise provided by these rules, methods of discovery described in Subsection R151-46b-9(4) may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(8) Supplemented Disclosures and Amended Responses. A party who has made a disclosure under Subsections (2) or (3) or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include information thereafter acquired if ordered by the presiding officer or in the following circumstances:

(a) A party shall supplement at appropriate intervals disclosures under Subsections R151-46b-9(2) and (3) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or

corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under Subsection R151-46b-9(3)(a), the duty extends to information contained in the report, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Subsection R151-46b-9(3)(b) are due.

(b) A party shall amend a prior response to a request for production within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(9) Initial Prehearing Conference.

(a) The party initiating the adjudicative proceeding shall file a written request for the scheduling of an initial prehearing conference and provide a copy to the presiding officer within 10 days after the filing of the response to the notice of agency action or within 10 days after the filing of the request for agency action in a case commenced by such a request. The presiding officer shall contact the parties upon receiving that request for the scheduling of the conference and arrange for that conference to be held at the earliest feasible time. Nothing in this rule shall limit the ability of the presiding officer to contact the parties and schedule the conference on his own initiative.

(b) The conference may be conducted either in person or telephonically. All parties, or their counsel, shall participate in the conference. The conference shall include discussion of discovery, prehearing motions and other matters pertaining to the orderly management of the proceeding.

(c) During the initial prehearing conference, the presiding officer shall issue a verbal order regarding the following matters, and shall issue a written order to the same effect after the conference is concluded:

(i) scheduling any additional prehearing conferences;

(ii) setting a deadline for the filing of prehearing motions, including motions for summary judgment;

(iii) modifying, if appropriate, any of the deadlines for disclosures under Subsection R151-46b-9(3);

(iv) resolving any discovery issues;

(v) scheduling a tentative hearing date; and

(vi) dealing with any other matters appropriate in the circumstances of the case.

(d) A party joined after the initial prehearing conference is bound by the order issued as a result of that conference, unless the presiding officer orders on stipulation or motion a modification of that order. Any such stipulation or motion shall be filed within a reasonable time after joinder.

(10) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(a) Every disclosure made pursuant to Subsections R151-46b-9(2) and (3) shall be signed by at least one attorney of record or by the party if not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(b) Every request for discovery or any response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(c) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(11) Filing of Discovery Requests or Disclosures.

(a) Unless otherwise ordered by the presiding officer, a party shall not file any request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service. Unless otherwise ordered by the presiding officer, a party shall not file any of the disclosures required by the initial prehearing order pursuant to Subsection R151-46b-9(2) or any of the disclosures required by Subsection R151-46b-9(3)(a), but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service. Except as provided in Subsection R151-46b-9(13)(f)(i) or unless otherwise ordered by the presiding officer, depositions shall not be filed. A party shall file the disclosures required by Subsection R151-46b-9(3)(b) unless otherwise ordered by the presiding officer.

(b) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request for discovery or the response which is at issue.

(12) Subpoenas.

(a) Every subpoena shall be issued by the presiding officer under the seal of the department or applicable division, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place therein specified. A subpoena may also command the person to whom it is directed to produce books, papers, or tangible things designated therein, and in the case of a subpoena for a deposition, to also permit inspection and copying of such items. A subpoena for a deposition must limit its designation of such items to matters which properly fall within the scope of discoverable information as provided in Subsection R151-46b-9(1)(a). The presiding officer shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) Service of a subpoena upon a person named therein shall be accompanied by a tender of fees for one day's attendance and the mileage allowed by law.

(c) A subpoena commanding a person to appear at a hearing or a deposition being held in this state may be served at any place within this state. A person who resides in this state may be required to appear at a deposition only in the county where the person resides, or is employed, or transacts business in person, or at such other place as the presiding officer may order. A person who does not reside in this state may be required to appear at a deposition only in the county of this state where the person is served with a subpoena, or at such other place as the presiding officer may order.

(d) A subpoena commanding a person to appear at a deposition or to produce or allow the inspection of documents, tangible things or premises located outside this state shall be served in accordance with the requirements of the jurisdiction in which such service is made.

(e) Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the presiding officer may:

(i) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(ii) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(f) In the case of subpoenas requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena a written objection to production, inspection or copying of any or all of the designated materials. If such objection is made, the party serving the subpoena shall not be entitled to production, inspection or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

(13) Depositions Upon Oral Examination: General provision; Persons who may be deposed.

Under the limited circumstances prescribed in this Subsection, a party may with leave of the presiding officer take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of any party in the proceeding. The attendance of witnesses may be compelled by subpoena as provided in Subsection R151-46b-9(12). Depositions of expert witnesses shall not be permitted.

(a) Before a party may request leave to take a person's deposition, the party must first make diligent efforts to obtain discovery from that person by means of an informal interview. A party shall not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of any party in the proceeding and:

(i) has refused a reasonable request by the moving party for an informal interview;

(ii) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;

(iii) has refused to answer reasonable questions propounded to him by that party in an informal interview; or

(iv) will be unavailable to testify at the hearing.

In deciding whether to issue such an order, the presiding officer shall take into consideration the probative value which the testimony of that witness is likely to have in the proceeding. The burden of demonstrating the need for a deposition shall be upon the party requesting the deposition.

(b) Notice of Examination: General Requirements; Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(i) A party permitted to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice.

(ii) The parties may stipulate in writing or, upon motion, the presiding officer may order the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at his own expense. Any objections under Subsection R151-46b-9(13)(c), any changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in this rule, and the certification of the officer required by Subsection R151-46b-9(13)(f), shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

(iii) The notice to a party deponent may be accompanied by a request made in compliance with Subsection R151-46b-9(14) for the production of documents and tangible things at the taking of the deposition.

(iv) A party may, in his notice and in a subpoena, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

(v) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections.

Examination and cross-examination of witnesses may proceed as permitted at the hearing under the provisions of the

Utah Administrative Procedures Act and the Utah Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Subsection R151-46b-9(13)(b)(ii) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answer verbatim.

(d) Motion to Terminate or Limit Examination.

At any time during the taking of the deposition, on motion of either a party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition, as provided in Subsection R151-46b-9(6). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore. The deposition may then be used as though signed, unless a motion to suppress is filed pursuant to Subsection R151-46b-9(13)(i)(c)(v) and the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(i) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the presiding officer, he shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly send the sealed transcript of the deposition to the attorney who arranged for the transcript to be made. If the party taking the deposition is not represented by an attorney, the transcript of the deposition shall be filed with the division or committee before which the proceeding is being held unless otherwise ordered by the presiding officer. An attorney receiving the transcript of the deposition shall store it under conditions that will protect it against loss, destruction, tampering or deterioration. The officer shall file, and serve upon all parties, a certificate indicating to whom he delivered the transcript, and the date he did so.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, he may either offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to the original transcript of the deposition pending final disposition of the case.

(ii) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(i) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the presiding officer may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(ii) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the presiding officer may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) Persons Before Whom Depositions May Be Taken.

(i) Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the presiding officer in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(ii) In a foreign country, depositions may be taken:

(A) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; or

(B) before a person commissioned by the presiding officer. The person so commissioned shall have the power, by virtue of his commission, to administer any necessary oath and take testimony. A commission shall be issued on application and

notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission that the taking of the deposition in any other manner in impracticable or inconvenient; and a commission may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title.

(iii) No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the proceeding.

(i) Use of Depositions in Agency Adjudicative Proceedings.

(a) Use of Depositions.

At a hearing or upon argument of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(i) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Utah Rules of Evidence.

(ii) The deposition of either a party or anyone who, at the time of taking the deposition, was an officer, director, or managing agent, or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party, may be used by an adverse party for any purpose.

(iii) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds that:

(A) the witness is dead;

(B) the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(iv) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought, in fairness, to be considered with the part introduced, and any party may introduce any other parts.

All depositions lawfully taken and duly filed in any court or another agency of this state may be used as if originally taken in the pending proceeding. A deposition previously taken may also be used as permitted by the Utah Rules of Evidence.

(b) Objections to Admissibility.

Subject to the provisions of Subsection R151-46b-9(13)(i)(c), objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

(i) All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(ii) Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(iii) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(iv) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(v) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(14) Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

(a) Scope.

Upon approval by the presiding officer, any party may serve on any other party a request:

(i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Subsection R151-46b-9(1)(a) and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Subsection R151-46b-9(1)(a).

(b) Procedure.

Before permitting a party to serve a request for production of documents, the presiding officer must first find that the party seeking such leave has demonstrated that the records he seeks have not already been provided to him in the initial disclosures submitted by another party. After approval by the presiding officer, the request may be served upon any party. The request

shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 20 days after the service of the request. The presiding officer may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Subsection R151-46b-9(16) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(15) Physical and Mental Examination of Persons.

(a) Order for Examination.

When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or person by whom it is to be made.

(b) Report of Examining Physician.

(i) If requested by the party against whom an order is made under Subsection (a) of this rule or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled, upon request, to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The presiding officer on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report, the presiding officer may exclude his testimony if offered at the hearing.

(ii) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(iii) Subsection R151-46b-9(15)(b) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise. Subsection R151-46b-9(15)(b) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

(16) Motion to Compel Discovery; Sanctions for Failure to Make or Cooperate in Discovery.

(a) A party may request entry of an order compelling discovery as follows:

(i) If a party fails to make disclosures required by an initial prehearing order pursuant to R151-46b-9(2), or a party fails to make the disclosures required by R151-46b-9(3), or a deponent fails to answer a question propounded under Subsection R151-46b-9(13), or a corporation or other entity fails to make a designation under Subsection R151-46b-9(13)(b)(iv), or a party, in response to a request for inspection submitted under Subsection R151-46b-9(14), fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling such disclosures, or an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the presiding officer denies the motion in whole or in part, the presiding officer may make such protective order as he would have been empowered to make on a motion made pursuant to Subsection R151-46b-9(6).

(ii) For purposes of Subsection R151-46b-9(16)(a)(i), an evasive or incomplete answer is to be treated as a failure to answer.

(b) Discovery Sanctions.

(i) If a party or other person fails to comply with an order compelling discovery issued by the presiding officer, the department may seek enforcement of that order by seeking civil enforcement in the district court as provided in Section 63-46b-19.

(ii) If a party, an officer, director, or managing agent of a party or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a party fails to obey an order or provide or permit discovery, including an order made under Subsection R151-46b-9(16)(a), the presiding officer may make such orders in regard to the failure as are just, including:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iii) If a party fails to comply with an order under Subsection R151-46b-9(15)(a) requiring him to produce another for examination, the presiding officer may enter any order listed in paragraphs (A), (B), and (C) of Subsection R151-46b-9(16)(b)(ii) unless the party failing to comply shows that he is unable to produce such person for examination.

(iv) If a party, an officer, director, or managing agent of a party or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, fails to serve a written response to a request for inspection submitted under Subsection R151-46b-9(14), after proper service of the request, the presiding officer on motion may make such orders in regard to the failure as are just and may take any action authorized under paragraphs (A), (B) and (C) of Subsection R151-46b-9(16)(b)(ii). In lieu of any order or in addition thereto, the presiding officer shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the presiding officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in Subsection R151-46b-9(16) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Subsection R151-46b-9(6).

(v) The failure to comply with Subsections R151-46b-9(1) through R151-46b-9(15) or to honor any certification made under those rules may be found by the presiding officer to be a default under Section 63-46b-11.

R151-46b-10. Hearings.

(1) Hearings Required or Permitted.

A hearing shall be held in all adjudicative proceedings in which a hearing is:

(a) required by statute or rule and not waived by the parties; or

(b) permitted by statute or rule and timely requested.

(2) Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

(a) the time period for filing a response to a notice of agency action if a response is required or permitted;

(b) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or

(c) the filing of the request for agency action.

(3) Scheduling of Hearings.

(a) The date, time, and place of a hearing shall be set forth in the notice of agency action or the notice of receipt of request for agency action, or, if not known at the time of the notice, in a separate notice of hearing.

(b) The presiding officer may, upon a determination of good cause, issue an order modifying the date, time, or place of a hearing.

(4) Hearings Open to Public; Exceptions.

(a) Any hearing in an adjudicative proceeding is open to the public unless closed by the presiding officer conducting the hearing, pursuant to Title 63, Chapter 46b, the Administrative Procedures Act, or by a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(b) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act. Deliberations are closed to the public.

(5) Bifurcation of Hearing.

The presiding officer, good cause appearing, may order a hearing bifurcated into a findings phase relative to the allegations set forth in the petition, and a sanctions phase, if required, based upon the findings.

(6) Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall normally be as follows:

(a) opening statement of the party with the burden of proof;

(b) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;

(c) case-in-chief of the party which has the burden of proof and cross examination of witnesses by opposing party;

(d) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;

(e) rebuttal case by the party which has the burden of proof;

(f) surrebuttal case by the opposing party;

(g) further rebuttal or surrebuttal as permitted by the presiding officer;

(h) closing argument by the party which has the burden of proof;

(i) closing argument by the opposing party; and

(j) final argument by the party which has the burden of proof.

(7) Telephonic Testimony.

(a) Telephonic testimony is only permissible in a formal adjudicative proceeding upon the consent of the parties or if warranted by exigent circumstances. Normally, expenses which would be incurred by a party to produce in-person testimony do not constitute an exigent circumstance as to justify telephonic testimony in a formal adjudicative proceeding. Telephonic testimony is generally permissible in an informal proceeding upon the request of any party.

(b) When telephonic testimony is to be presented, the presiding officer shall require that the identity of any witness so testifying be established. The presiding officer shall also provide safeguards to assure the witness does not refer to documents improperly and to reduce the possibility the witness may be coached or influenced during their testimony.

(8) Standard of Proof.

The standard of proof in all proceedings under these rules, whether initiated by a notice of agency action or request for agency action, shall be a preponderance of the evidence.

(9) Burden of Proof.

The department has the burden of proof in any proceeding initiated by a notice of agency action. The party who seeks action from the department has the burden of proof in any proceeding initiated by a request for agency action.

(10) Default Procedures.

(a) Order entering the default of a party.

(i) The presiding officer may enter the default of a party in accordance with Section 63-46b-11, sua sponte or upon motion of a party.

(ii) A party filing a motion for entry of default shall also file an affidavit substantiating the grounds for the motion.

(iii) If the submissions establish a basis for entry of default, the presiding officer may enter the default without notice to the defaulting party or a hearing.

(b) Additional proceedings.

(i) Following the entry of default, the presiding officer may, sua sponte or upon motion of a party, conduct further proceedings and enter a final order based on the submissions filed without notice to or participation by the defaulting party when:

(A) the relief sought against the party is specifically set forth in the pleadings that were served upon that party;

(B) the factual allegations contained in those pleadings are supported by affidavit or by a verified petition; and

(C) those factual allegations, and applicable law, support the granting of the relief sought against that party.

(ii) In all other cases, the presiding officer shall not enter a final order without conducting a hearing in which the party seeking relief may submit proffers, evidence, or legal arguments in support of the relief it requests against the defaulting party. The hearing may be held without notice to or participation by the defaulting party if the pleadings served upon the defaulting party set forth the potential relief which could be obtained against such party.

(c) The order of default and the final order may be concurrently issued.

(11) Record of Hearing.

(a) Record Requirement.

The presiding officer shall cause a record to be made of all prehearing conferences and all hearings which are conducted.

(b) Record Methods.

(i) Formal Adjudicative Proceedings.

The presiding officer shall cause the record of a hearing in a formal adjudicative proceeding to be made by means of a certified shorthand reporter, unless the presiding officer determines it to be unnecessary or impracticable, in which case he shall cause the record to be made by means of an audio or video cassette recorder or other recording device.

(ii) Informal Adjudicative Proceedings.

The presiding officer may cause a record of a hearing in an informal adjudicative proceeding to be made by a method set forth in Subsection (i) or by minutes prepared or adopted by the presiding officer.

(c) Record Expense.

The hearing in an adjudicative proceeding shall be recorded at the expense of the agency.

(d) Transcription of Record.

(i) The record of a hearing is not required to be transcribed. However, a party may elect to have the record of a hearing transcribed by the reporter who reported the hearing or by a reporter approved by the presiding officer.

(ii) The party requesting the transcript shall bear the cost of the transcription.

(iii) The original transcript of a record of a hearing shall be filed with the presiding officer.

(12) Fees.

(a) Witness Fees.

Witnesses appearing upon the demand or at the request of a party shall be entitled to receive payment from that party in the amount of $18.50 for each day in attendance and, if traveling more than 50 miles to attend and return from the hearing, shall be entitled to receive 25 cents per mile for each mile thus actually and necessarily traveled. Any witness subpoenaed by a party other than the department may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness shall not be required to appear.

(b) Interpreter and Translator Fees.

Interpreters and translators, including those skilled in foreign languages and communication with the deaf, shall be allowed such compensation for their services as the presiding officer may allow.

(c) Officers and Employees not Entitled to Fees - Exception.

No officer or employee of the United States, or of the State of Utah, or of any county, incorporated city or town within the State of Utah, shall receive any witness fee when testifying in an adjudicative proceeding unless the officer or employee is required to testify at a time other than during his normal working hours.

(d) Only One Fee Per Day Allowed.

No witness shall receive fees in more than one adjudicative proceeding on the same day.

R151-46b-11. Orders.

(1) Requirements.

All orders issued by a presiding officer shall comply with the requirements of Subsection 63-46b-5(1)(i) or Section 63-46b-10, respectively. In the case of default orders and orders issued subsequent to a default order, the requirements of Subsections 63-46b-5(1)(i)(iii) and (iv) and 63-46b-10(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63-46b-11(3).

(2) Effective Date.

The effective date of the final order in an adjudicative proceeding shall be 30 days after the issuance thereof unless otherwise provided in the order.

(3) Clerical Mistakes.

Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the department on its own initiative or on the motion of any party and after such notice, if any, as the department orders. Such mistakes may be so corrected at any time prior to the docketing of a petition for judicial review or as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

R151-46b-12. Agency Review.

(1) Availability of Agency Review.

Except as otherwise provided in Subsection 63-46b-11(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director of the department within thirty days following the issuance of the order.

(2) Exception to filing requirements.

Agency review is not available as to any order or decision entered by the Real Estate Appraiser Registration and Certification Board. However, agency reconsideration is available pursuant to R151-46b-13.

(3) Content of a Request for Agency Review and Submission of the Record.

(a) The content of a request for agency review shall be in accordance with Subsection 63-46b-12(1)(b). The request for agency review shall include a copy of the order which is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to appropriate legal authority and to the relevant portions of the record developed during the adjudicative proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence. A party challenging a legal conclusion must support their argument with citation to any relevant authority and also cite to those portions of the record which are relevant to that issue.

(d) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to such finding or conclusion to be prepared. When a request for agency review is filed under such circumstances, the party seeking review shall certify that a transcript has been ordered and shall notify the department when the transcript will be available for filing with the department. The party seeking agency review shall bear the cost of the transcript.

(e) When agency review is sought of an order entered in an informal proceeding, the division or committee which issued the order shall provide the record of the proceeding to the department. The record shall include the audio or video tape of the proceeding, or the minutes prepared or adopted by the presiding officer pursuant to Subsection R151-46b-10(11)(b)(ii).

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(4) Effect of Filing.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review. If a stay is not timely requested, the order subject to review shall take effect according to its terms.

(b) The division or committee which issued the order subject to review may oppose the request for a stay in writing within ten days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public. The department may also enter an interim order granting a stay pending a decision on the motion for a stay.

(c) In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(5) Memoranda.

(a) The department may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the department.

(b) When no transcript is necessary to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request. If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response shall be filed no later than 15 days from the filing of the request for agency review or no later than 15 days from the filing of any subsequent memoranda supporting that request. Any final reply memoranda shall be filed no later than five days after the filing of a response to the request for agency review.

(6) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The department may order or permit oral argument if the department determines such argument is warranted to assist in conducting agency review.

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63-46b-16(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63-46b-17(1)(b).

(9) Order on Review.

The order on review shall identify the effective date of the order and shall comply with the requirements of Subsection 63-46b-12(6).

R151-46b-13. Agency Reconsideration.

(1) Filing requirements for agency reconsideration.

(a) Before seeking judicial review of any order or decision entered by the Real Estate Appraiser Registration and Certification Board, an aggrieved party may file a petition for reconsideration by the board pursuant to Section 63-46b-13.

(b) The request shall be signed by the party seeking reconsideration and filed with the Division of Real Estate, which shall provide a copy of the request to the board. Any response to the request for reconsideration shall be filed with the division within ten days of the filing of the request for reconsideration. The division shall provide a copy of any response to the board.

(2) Effect of filing.

Upon the timely filing of a request for reconsideration by the board, the effective date of the previously issued order or decision shall be suspended pending the completion of reconsideration.

(3) Order on reconsideration.

Any written order on reconsideration shall be issued by the board no later than 20 days after the filing of the request. Any order on reconsideration shall set forth an effective date and constitutes final agency action for purposes of Section 63-46b-

14. The order shall provide notice to any aggrieved party of any right to judicial review.

R151-46b-14. Exhaustion of Administrative Remedies.

(1) In accordance with Section 63-46b-14, an aggrieved party may seek judicial review of a final order only after exhausting all administrative remedies available.

(2) The order on review constitutes final agency action for purposes of Subsection 63-46b-14(1).

R151-46b-15. Stay and Other Temporary Remedies Pending Judicial Review.

(1) Unless otherwise provided by statute, a motion for a stay of an order or other temporary remedy during the pendency of judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review thereof;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay or other temporary remedy is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay or other temporary remedy is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay or other temporary remedy is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(2) The executive director of the department may grant a motion for a stay of an order or other temporary remedy during the pendency of judicial review upon a showing by the aggrieved party that the requirements for such relief established in this rule are met.

R151-46b-16. Emergency Adjudicative Proceedings.

Unless otherwise provided by statute or rule:

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63-46b-20 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63-46b-20. The hearing will be conducted in conformity with Section 63-46b-8.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63-46b-20 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within a reasonable time after the hearing, the presiding officer shall issue an order in accordance with the requirements of Section 63-46b-10. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

R151-46b-17. Declaratory Orders.

(1) Filing of Petition for Declaratory Order.

A petition for the issuance of a declaratory order shall be filed with the agency head which has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought. The petition shall set forth the question to be answered, the facts and circumstances related to the question, the statute, rule, or order to be applied to the question, and whether oral argument is sought in conjunction with the petition. The Petition shall comply with the requirements for pleadings set forth in Section R151-46b-7.

(2) Disposition of Petition.

Upon receipt of a petition for a declaratory order, the agency head shall issue a written order in accordance with Subsection 63-46b-21(6) or allow the petition to be denied in accordance with Subsection 63-46b-21(7).

(a) If the agency head issues a declaratory order declaring the applicability of the statute, rule, or order in question to the specified facts and circumstances set forth in the petition without setting the matter for an adjudicative proceeding, the order shall be based upon a review of the petition and oral argument upon the petition, if any; laws and rules applicable to the petition; records maintained by the agency; or any other relevant information reasonably available to the agency.

(b) If the agency head sets the matter for an adjudicative proceeding, a notice of adjudicative proceeding shall be issued in accordance with the requirements of Subsection 63-46b-3(2)(a), to the extent applicable.

(3) Classes of Circumstances in Which the Agency Will Not Issue a Declaratory Order.

The following are defined as classes of circumstances in which the agency will not issue a declaratory order:

(a) questions involving circumstances set forth in Subsection 63-46b-21(3)(a)(ii) or (3)(b);

(b) questions which are not within the jurisdiction of the agency to address;

(c) questions which have already been adequately addressed by an agency in the form of an order;

(d) questions which can be adequately addressed by an agency in the form of informal advice;

(e) questions which are already clearly addressed by statute or rule and do not warrant a declaratory order;

(f) questions which are more properly addressed by statute or rule;

(g) questions which arise out of pending or anticipated

litigation in a civil, criminal, or administrative forum which are more properly addressed by that forum; and

(h) questions which are irrelevant, insignificant, meaningless, or spurious.

(4) Agency Review.

The recipient of a declaratory order may request agency review pursuant to Section 63-46b-12 and these rules.

R151-46b-18. Record of an Adjudicative Proceeding.

(1) Definition.

The record of an adjudicative proceeding includes the pleadings, the recording of any hearing under Subsection R151-46b-10(11), any transcript of a hearing, and orders or other documents issued by any presiding officer in the adjudicative proceeding or on agency review or reconsideration of the adjudicative proceeding.

(2) Retention.

The record of an adjudicative proceeding shall be retained by the department pursuant to Title 63, Chapter 2, the Government Records Access and Management Act ("GRAMA"). As used herein, "department" means the department, division or committee before whom the adjudicative proceeding was conducted.

(3) Classification.

The record of an adjudicative proceeding is classified as a "public record" except as otherwise classified by the department pursuant to GRAMA.

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R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Rules.
R156-55b-101. Title.

These rules are known as the "Electricians Licensing Rules".

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or these rules:

(1) "Electrical work" as used in Subsection 58-55-102(8)(a) and in these rules means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the 1996 edition of the National Electrical Code, which is hereby adopted and incorporated by reference. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. Other wiring, including wiring under 50 volts is subject to licensing requirements.

(2) "In or out of the immediate presence of the supervising person" as used in Subsection 58-55-102(14) means that the apprentice and the supervising electrician may or may not be within sight of one another, but will still be physically present on the same project or jobsite.

(3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(14) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. These installations do not include modification or repair of "Premises Wiring" as defined in the National Electrical Code. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(4) "Residential project" as used in Subsection 58-55-302(3)(g)(ii) means electrical work performed in residential dwellings under four stories and will include single family dwellings, apartment complexes, condominium complexes and plated subdivisions.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-55b-501.

(6) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(8)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Tasks such as handling wire on large wire pulls or assisting in moving heavy electrical equipment may utilize unlicensed persons in accordance with Subsections 58-55-102(8)(b)(i) and (ii) when the task is performed in the immediate presence of and supervised by properly licensed persons. Tasks that are normally performed by the skilled labor of other trades, such as operating heavy equipment, driving, forming and pouring concrete, welding and erecting structural steel shall not be considered part of the electrical trade.

R156-55b-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 55.

R156-55b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is described in Section R156-1-107.

R156-55b-302a. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), the following examinations, each consisting of a theory section, a code section and a practical section, are approved by the division in collaboration with the board:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) The minimum passing score for each section of each examination is 70%.

(3) If an applicant passes any one section of the examination and fails any one or more of the other sections, he is only required to retake the section of the examination failed.

(4) Admission to the examination is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55b-302b and R156-55b-302c.

R156-55b-302b. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-55-302(f)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302c.

(2) In accordance with Subsection 58-55-302(e)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302c.

(3) In accordance with Subsections 58-55-302(c)(ii) and (iii), an approved course of study for a graduate of an electrical

trade school is a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent.

(4) It shall be the responsibility of the applicant to provide adequate documentation to establish equivalency.

(5) In accordance with Subsection 58-55-302(c)(i), an approved college or university shall be accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology or the Canadian Engineering Accrediting Board.

R156-55b-302c. Qualifications for Licensure - Work Experience.

(1) In accordance with Subsections 58-55-302(3)(c), (d), (e) and (f), the practical electrical experience, course of study, practical experience, planned training program, or electrical training program shall include on-the-job work experience in the following categories and approximate percentages:

(a) 50-80% in raceways, boxes and fittings, wire and cable to include conduit, wireways, cableways and other raceways and associated fittings, individual conductors and multiconductor cables, and nonmetallic-sheathed cable;

(b) 10-20% in wire and cable to include individual conductors and multi-conductor cables;

(c) 5-15% in distribution and utilization equipment to include transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors, and other distribution and utilizations equipment; and

(d) 5-15% in specialized work to include grounding, wiring of systems for sound, data, communications, alarms, automated systems, generators, batteries, computer equipment, etc.

(2) Each year of work experience shall include at least 2000 hours and may be obtained in one or more years. No more than one year of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

R156-55b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-55b-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of master, journeyman, residential master, residential journeyman and apprentice electrician licenses issued under Title 58, Chapter 55.

(2) Continuing education shall consist of 16 hours of course work in each preceding two year period of licensure or expiration of licensure.

(3) A minimum of eight hours shall be on the current edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b).

(4) The licensee is responsible for maintaining competent records of completed qualified continuing education for a period of four years after the close of the two year renewal period to which the records pertain.

(5) The standards for qualified continuing education are as follows:

(a) the content may be relevant to the electrical trade and consistent with the laws and rules of this state;

(b) an instructor must either be currently teaching or have taught courses related to the electrical trade within the preceding two years for one of the following:

(i) a trade school, college or university whose electrical program is approved in accordance with Subsections R156-55b-302b(1)(a) and (5);

(ii) a professional association or organization representing licensed electricians whose program objectives relate to the electrical trade;

(iii) the licensing agency of another state; or

(iv) the Division's Building Codes Education program.

(6) Electricians Licensing Board members, acting in their official capacity as a board member, may attend any continuing education course at no charge, at any time, for no credit, to monitor the quality of instruction.

R156-55b-401. Scope of Practice.

In accordance with Subsection 58-55-308(1), the following shall apply:

(1) It shall be the responsibility of the journeyman, residential journeyman, master or residential master electrician who is licensed by the division to insure that the work installed by himself, as well as by any apprentice under his supervision, is properly installed. Proper and safe installations shall be the responsibility of the supervising party or parties.

(2) An apprentice in a planned training program as set forth in Subsection 58-55-302(3)(e)(i) may be supervised as a fourth year apprentice in the fifth and sixth year of apprenticeship; however, in the seventh and succeeding years of apprenticeship, he shall be under immediate supervision as set forth in Subsection 58-55-302(3)(g)(i).

(3) All other apprentices shall be under immediate supervision as set forth in Subsection 58-55-302(3)(g).

(4) For the purposes of Subsections 58-55-102(23), 58-55-501(14) and 58-55-302(3)(g), apprentices and the licensed electricians responsible for their supervision shall be employees of the same contractor, or the employers of the supervising employees shall have a contractual responsibility for the performance of both the supervised and supervising employees. Employees of licensed employee leasing companies who provide workers under a contract with an electrical contractor shall be considered to be the employees of the electrical contractor for the purposes of this rule.

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes failure of a licensee to carry a copy of their current license at all times when performing electrical work.

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R156. Commerce, Occupational and Professional Licensing.
R156-57. Respiratory Care Practices Act Rules.
R156-57-101. Title.

These rules are known as the "Respiratory Care Practices Act Rules".

R156-57-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 57, as used in Title 58, Chapters 1 and 57, or these rules:

(1) "Supervised" as used in Subsection 58-1-307(1)(b) or "supervising" as used in Subsection 58-57-2(4)(e) means that the licensed respiratory care practitioner is present in the facility and shall be available to see the patient and give immediate consultation with respect to care.

R156-57-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 57.

R156-57-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section 58-1-107.

R156-57-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-57-4(2)(f) and Sections 58-57-5 and 58-1-309, all applicants for licensure shall pass the following examinations:

(1) the National Board for Respiratory Care (NBRC) Certification Examination for Entry Level Respiratory Therapists (CRT); or

(2) the NBRC Registry Examination for Advanced Respiratory Therapists (RRT).

R156-57-302b. Qualifications for Licensure - Education Requirements.

In accordance with Subsection 58-57-4(2)(e) and Section 58-57-5, "a respiratory care practitioner education program that is approved by the board" means a respiratory care educational program accredited by the Committee on Accreditation for Respiratory Care (COARC) as evidenced by NBRC certification as a CRT or RRT.

R156-57-303. Renewal Cycle - Procedures.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 57 is established by rule in Section R156-1-308.

KEY: licensing, respiratory care*

May 2, 2000	**58-57-1**
Notice of Continuation March 3, 1997	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-71. Naturopathic Physician Practice Act Rules.
R156-71-101. Title.

These rules are known as the "Naturopathic Physician Practice Act Rules."

R156-71-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 71, as used in Title 58, Chapters 1 and 71, or these rules:

(1) "Approved clinical experience program" or "residency program" as used in Subsections 58-71-302(1)(e) and 58-71-304.2(1)(b), means a minimum 12 month program associated with a naturopathic medical school or college accredited by the Council of Naturopathic Medical Education.

(2) "Direct supervision" as used in Subsection 58-71-304.2(1)(b), means the supervising naturopathic physician, physician and surgeon, or osteopathic physician is responsible for the naturopathic activities and services performed by the naturopathic physician intern and is normally present in the facility and when not present in the facility is available by voice communication to direct and control the naturopathic activities and services performed by the naturopathic physician intern.

(3) "Direct and immediate supervision" of a medical naturopathic assistant ("assistant") as used in Subsections 58-71-102(6) and 58-71-305(7), means that the licensed naturopathic physician is responsible for the activities and services performed by the assistant and will be in the facility and immediately available for advice, direction and consultation.

(4) "Naturopathic physician intern" or "intern" means an individual who qualifies for a temporary license under Section 58-71-304.2 to engage in a naturopathic physician residency program recognized by the division under the direct supervision of an approved naturopathic physician, physician and surgeon, or osteopathic physician.

(5) "NPLEX" means the Naturopathic Physicians Licensing Examinations.

(6) "Qualified continuing education," as used in these rules, means continuing education that meets the standards set forth in Subsection R156-71-304.

(7) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 71, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-71-502.

R156-71-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 71.

R156-71-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-71-202. Naturopathic Physician Formulary.

(1) In accordance with Subsections 58-71-102(8) and 58-71-202, the naturopathic physician formulary which consists of noncontrolled substance legend medications deemed appropriate for the scope of practice of naturopathic physicians, the prescription of which is approved by the Division in collaboration with the Naturopathic Formulary Advisory Peer Committee, consists of the following legend drugs, listed by category:

Adrenergic Stimulators, limited to: Albuterol, Epinephrine, and Metaproteranol;

Amino Acids;

Anesthetics (local);

Antiemetics;

Antifungals, limited to: Nystatin and Fluconazole;

Antigout;

Antihistamines;

Anti-inflammatories, except DMARDS;

Antimicrobials (oral), limited to: Pencillins, 1st and 2nd generation Cephalosporins, Tetracyclines, Macrolides, Azalides, Lincosamines, Metronidazole, Hydantoins, and Sulfas;

Antimicrobials (ophthamologic), limited to: Sulfas and Macrolides;

Antimicrobials (topical);

Antivirals, limited to Acyclovir;

Biologics, limited to: Skin Testing, CDC recommended Immunizations, Toxoids, and Immunoglobulin;

Contraceptives, except implants and injections;

Corticosteroids (oral or topical), except Opthamologic Preparations;

Diabetic Agents, limited to: Insulin, and oral Hypoglycemics, except Thiazolidinediones;

Diuretics, limited to: Thiazide or Loop;

Electrolyte and Fluid Replacements;

Enzymes, limited to: Digestive and Proteolytic;

H2 Blockers;

Hormones (oral or topical), limited to: Estrogen, Testosterone, Progestins, and Thyroid;

Migraine Preparations, limited to: Ergotamines and Sumatriptin;

Minerals: Macro and Micro;

Osteoporosis agents, limited to: Calcitonin and Raloxifene;

Proton-Pump Inhibitors;

Urinary Antispasmodics;

Vitamins;

Other: Methergine and Pitocin, limited to use only after the uterus has been emptied;

Silver Nitrate.

(2) New categories or classes of drugs will need to be approved as part of the formulary prior to prescribing/administering.

(3) The licensed naturopathic physician has the responsibility to be knowledgeable about the medication being prescribed or administered.

R156-71-302. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-71-302(1)(f) and 58-71-302(2)(c), the licensing examination sequence required for licensure is as follows:

(1) NPLEX Basic Science Series, the State of Washington Basic Science Series or the State of Oregon Basic Science Series;

(2) NPLEX Clinical Series;

(3) NPLEX Homeopathy;

(4) NPLEX Minor Surgery; and

(5) the Utah Naturopathic Physician Practice Act Law and Rule Examination.

R156-71-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 71 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-71-304. Qualified Continuing Education.

(1) In accordance with Subsection 58-71-304(1)(a), qualified continuing education shall consist of 24 hours of qualified continuing professional education in each preceding two year period of licensure.

(2) If a licensee allows his license to expire and the application for reinstatement is received by the division within two years after the expiration date the applicant shall:

(a) submit documentation of having completed 24 hours of qualified continuing professional education required for the previous renewal period; and

(b) submit documentation of having completed a pro rata amount of qualified continuing professional education based upon one hour of qualified continuing professional education for each month the license was expired for the current renewal period.

(3) If the application for reinstatement is received by the division more than two years after the date the license expired, the applicant shall complete a minimum of 24 hours of qualified continuing professional education and additional hours as determined by the board to clearly demonstrate the applicant is currently competent to engage in naturopathic medicine.

(4) The standards for qualified continuing education are as follows:

(a) content must be relevant to naturopathic practice and consistent with the laws and rules of this state;

(b) under sponsorship of:

(i) an approved college or university; or

(ii) a professional association or organization representing a licensed profession whose program objectives are related to naturopathic practice;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) there must be a written post course or program evaluation; and

(g) documentation of attendance must be provided.

(5) Qualified continuing education shall consist of at least 10 hours of seminars, conferences or workshops addressing case management and prescribing of legend drugs.

(6) Audits of a licensee's continuing education hours may be done on a random basis by the division in collaboration with the board.

(7) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of two years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain this information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(8) The division in collaboration with the board may grant a waiver of continuing education requirements to a waiver applicant who documents he is engaged in full time activities or is subjected to circumstances which prevent the licensee from meeting the continuing professional education requirements established under this section. A waiver may be granted for a period of up to four years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-71-304a. Quality Assurance Program Criteria - Approval.

(1) In accordance with Subsection 58-71-304(2)(c), to be approved, a quality assurance program shall:

(a) demonstrate that reviewers:

(i) have knowledge and expertise in the practice of naturopathic medicine;

(ii) are competent to conduct a quality assurance program; and

(iii) are objective, unbiased and independent with respect to any individual subjected to the review;

(b) demonstrate that any other persons associated with the program are objective, unbiased and independent;

(c) have a program agreement or contract that as a minimum contains:

(i) a statement that the primary emphasis of the program is educational;

(ii) a provision to conduct a review process not less than once every two years;

(iii) a reasonable fee schedule;

(iv) audit criteria against which the licensee will be reviewed;

(v) standards for reporting the results of the review; and

(vi) procedures for issuance of and follow up to a corrective action plan that includes:

(A) reporting to the division a finding of gross incompetence; or

(B) reporting to the division a licensee who fails to substantially comply with the recommendations of the corrective action plan.

(2) The provider shall make available to the division the results of the review upon the proper issuance of a Subpoena Duces Tecum by the division in accordance with the provisions of Title 58, Chapter 1.

R156-71-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure to comply with the recommendations of a quality assurance corrective action plan; and

(2) failure to comply with the approved formulary.

KEY: licensing, naturopaths, naturopathic physician*
May 2, 2000 **58-71-101**
58-1-106(1)

58-1-202(1)

R162. Commerce, Real Estate.
R162-103. Appraisal Education Requirements.
R162-103-1. Definitions.

103.1.1 For the purposes of this rule, "school" includes:

(a) An accredited college, university, junior college or community college;

(b) Any state or federal agency or commission;

(c) A nationally or state recognized real estate appraisal or real estate related organization, society, institute, or association;

(d) Any other school or organization as approved by the Board.

103.1.2 "School director" means an authorized individual in charge of the educational program at a school.

R162-103-2. School Certification.

103.2.1 Each school requesting certification shall make application for approval on the form prescribed by the Division, and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the school's eligibility for certification:

103.2.1.1 Name, phone number, and address of the school, school director and all owners of the school.

103.2.1.2 Attestation to upstanding moral character by individuals who are school directors or owners of the school, and whether any individual:

(a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(c) has any action now pending by any appraiser licensing or other agency.

(d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.

(e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.2.1.3 A description of the type of school and a description of the school's physical facilities. All courses shall be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

103.2.1.4 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; and the school's refund policy.

103.2.2 A public school may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or similar schedule. A quarter hour of college credit is the equivalent of 10 classroom hours, and a semester hour of college credit is the equivalent of 15 classroom hours.

103.2.3 Upon approval by the Board, a school will be issued certification. All certifications expire January 1. Conditions of certification include the following:

(a) A school shall teach the approved course of study as outlined in the State Approved Course Outline;

(b) A school shall require each student to attend the required number of hours and pass a final examination;

(c) A school shall maintain a record of each student's attendance for a minimum of five years after his enrollment;

(d) A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the appraisal profession. A school shall refrain from disparaging a competitor's services or methods of operation;

(e) Within 15 calendar days after the occurrence of any material change in the school which could affect its approval, including the events listed in R162-103.2.1.2, the school shall give the Division written notice of that change; and

(f) A school will not attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank.

(g) A school shall provide to all students at the time of registration a copy of the qualifying questionnaire the student will be required by the Division to answer as part of the prelicensing or precertification examination.

R162-103-3. Course Certification.

103.3.1 Each school requesting approval of a course designed to meet the education requirements of licensure or certification shall make application for approval on a form prescribed by the Division and shall pay the applicable fee. The application shall include, and the Board may consider, the following information in determining eligibility for approval:

(a) A course outline including a description of the course, the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, and three to five learning objectives for every three hours;

(b) Indication of any method of instruction other than lecture method including: a slide presentation, cassette, video tape, movie, home study, or other.

(c) A copy of the three final examinations of the course and the answer keys which are used to determine if the student has passed the course;

(d) An explanation of what the school procedure is for maintaining the security of the final exams and the answer keys;

(e) A list of the titles, authors and publishers of all required textbooks;

(f) A list of the instructors and evidence of their certification by the Division, and a list of any guest lecturers to be used and evidence of their qualifications as an instructor for a specific course; and

(g) Days, times, and location of classes.

103.3.2 Upon approval by the Board, a course will be issued certification. All certifications expire January 1.

103.3.3 Each course of study will meet the minimum standards set forth in the State Approved Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics. Specific nonappraisal courses being used to satisfy the educational requirements shall have prior approval as to their applicability.

103.3.4 All courses of study will meet the minimum

hourly requirement of that course. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period. A 10-minute break will be given for each 50 minutes in class. Registration or certification credit will be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is not intended to limit the number of classroom hours offered.

103.3.5 A public school or institution may use any faculty member to teach an approved course provided the individual demonstrates to the satisfaction of the Division and the Board academic training or appraisal experience qualifying him to teach the course.

103.3.6 Distance education is defined as any educational process based on the geographical separation of instructor and student (e.g., CD ROM, On-line learning, correspondence courses, video conferencing, etc.). Distance education courses must provide interaction between the learner and instructor and must include testing. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent providing each course meets the following conditions:

103.3.6.1 The course (a) has been presented by an accredited college or university which offers distance education programs in other disciplines and where accreditation has been made by the Commission on Colleges or a regional accreditation association; or (b) has received approval for college credit by the American Council on Education's Program on Non-collegiate Sponsored Instruction, also known as PONSI; or (c) has been approved under the AQB Course Approval Program.

(a) The learner must successfully complete a written examination personally proctored by an official approved by the college or university or by the presenting entity; and

(b) The course must meet the requirements established by the AQB and be equivalent to the minimum of 15 classroom hours.

103.3.7 A maximum of 10% of the required class time may be spent in testing, including review test and final examination. A student cannot challenge a course or any part of a course of study by taking an exam in lieu of attendance.

103.3.7.1 If a student fails a school final examination, he will not be allowed to retest for a minimum of three days. The student will not be allowed to retake the same final exam, but will be given a new exam with different questions.

103.3.7.2 If the student fails the final exam a second time, he will not be allowed to retest for a minimum of two weeks at which time he will be given an entirely new exam with completely new questions. If the student fails this third exam, he will fail the course.

103.3.8 All texts, workbooks, supplement pamphlets and any other materials shall be appropriate and current in their application to the required course outline.

103.3.9 Within 15 calendar days after the occurrence of any material change in a course which could affect approval, the school shall give the Division written notice of the change.

R162-103-4. Education Credit for Noncertified Courses.

103.4.1 Education credit will be granted towards licensure or certification for an appraisal education course which has been taken and which has not been previously certified in Utah for prelicensing education credit, and has been provided by a school which meets the criteria as outlined in 103.1.

103.4.1.1 The course content shall have met the minimum standards set forth in the Utah State Approved Course Outline.

103.4.1.2 A course must be at least 15 hours in duration, including the examination. An hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period.

103.4.1.3 A final examination will be administered at the end of each course pertinent to that education offering.

103.4.2 Credit will not be granted for a course taken in which the applicant obtained credit from the course provider by challenge examination without having attended the course.

103.4.3 Credit will not be given for duplicate or highly comparable classes. Each course must represent a progression in which the appraiser's knowledge is increased.

103.4.4 There is no time limit regarding when education credit must have been obtained.

103.4.5 Hourly credit for a course taken from a professional appraisal organization will be granted based upon the Division approved list which verifies hours for these courses.

103.4.6 Credit will only be granted for a course that has been successfully completed. Successful completion of a course means that the applicant has attended a minimum of 90% of the scheduled class hours, has completed all required exercises and assignments, and has achieved a passing score on a course final examination. The final examination shall not be an open book examination.

103.4.7 Submission for Education Approval.

103.4.7.1 Courses that have not been previously certified for prelicensing credit will be reviewed by the Education Review Committee. It is the responsibility of the applicant to establish that a particular education offering will qualify to meet the education requirement for licensing or certification.

103.4.7.2 The applicant shall submit on a form provided by the Division a list of the courses that documents the course title, the name of the sponsoring organization, the number of classroom hours, and the date the course was completed.

103.4.7.3 The applicant will attest on a notarized affidavit that the courses have been completed as documented.

103.4.7.4 The applicant will support the claim for education credit if requested by the Division by providing proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

103.4.7.5 Applicants having appraisal education in categories other than those in the State Approved Course Outline may petition the Board on an individual basis for evaluation and approval of their education as being substantially equivalent to that required for licensing or certification.

R162-103-5. Instructor Application for Certification.

103.5.1 Each instructor requesting approval to be certified as an instructor to teach the education requirements of appraisal licensure or certification shall make application for approval on a form prescribed by the Division and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the instructor's eligibility for approval:

103.5.1.1 Attestation to upstanding moral character, including whether the individual:

(a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(c) has any action now pending by any appraiser licensing or other agency.

(d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.

(e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.5.2 The instructor will demonstrate evidence of knowledge of the subject matter by the following:

103.5.2.1 A minimum of five years active experience in appraising, or

103.5.2.2 Evidence of having completed college or other appropriate courses specific to the topic he proposes to teach, or

103.5.2.3 Evidence of other qualifications of experience, education, or credentials which are acceptable to the Board; and

103.5.2.4 Evidence of having passed an examination designed to test knowledge of the subject matter he proposes to teach.

103.5.3 An applicant to teach the course on USPAP shall conform to all of the above criteria and in addition:

103.5.3.1 The applicant shall be a licensed or state-certified appraiser, and shall have seven years of experience as a full-time appraiser within the past 15 years, and

103.5.3.2 Shall be able to provide evidence of having completed a USPAP course within the last two years, which course and accompanying exam have been approved by the Board.

103.5.4 Upon approval by the Board, an applicant will be issued certification. All certifications expire January 1 of each even numbered year. Conditions of renewal of certification include providing proof of the following:

103.5.4.1 Must have taught at least 20 hours of in-class instruction in a certified course during the preceding two years; and

103.5.4.2 Must have attended a real estate instructor development workshop sponsored or approved by the Division during the preceding two years.

103.5.5 Within 15 calendar days after the occurrence of any of the events listed in Section 103.5.1, an applicant or instructor shall give written notice to the Division of that event.

R162-103-6. Education Review Committee.

103.6 A committee may be appointed by the Board to review submissions for education credit for license or certification applicants and also to review submissions for certification of appraiser courses and instructors.

103.6.1 The Education Review Committee shall:

103.6.1.1 Review all applications for adherence to the education credit required for licensure or certification and make recommendations to the Division and the Board for approval or disapproval of the education claimed.

103.6.1.2 Review all submissions requesting certification of appraiser courses and instructors for prelicensing education purposes and make recommendations to the Division and the Board for approval or disapproval.

103.6.2 The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and ad valorem appraisers.

103.6.2.1 The chairperson of the committee shall be appointed by the Board.

103.6.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

103.6.3 If the review of an application has been performed by the Education Review Committee, and the Board has denied the application based on insufficient education or an inability to meet the certification of education requirements, the applicant may request that the Board review the issue again by making a request in writing to the Board within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-103-7. Continuing Education Course Certification.

103.7 As a condition of renewal, all appraisers will complete the equivalent of 28 classroom hours of appraisal education during the two-year term preceding renewal. The continuing education requirement is for the purpose of maintaining and increasing the appraiser's skill, knowledge and competency in real estate appraising.

103.7.1 Continuing education credit may be granted for courses that meet the following criteria:

(a) the course has been obtained from any of the course providers designated in 103.1.

(b) the course covers appraisal topics as suggested by the AQB.

(c) the length of the educational offering is at least two classroom hours, each classroom hour is defined as 50 minutes out of each 60-minute segment, and the continuing education credit is limited to eight hours per day.

(d) the course meets the requirements for distance learning as outlined in R162-103.3.7.

103.7.2 Real estate appraisal related field trips are acceptable for continuing education credit; however, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur.

103.7.3 Prelicensing education credit awarded to individuals seeking a different classification than that held, can also be used to satisfy a continuing education requirement.

103.7.4 Alternative Continuing Education Credit - continuing education credit may be granted for participation, other than as a student, in appraisal educational processes and programs.

103.7.4.1 Credit may be granted on a case by case basis for teaching, program development, authorship of textbooks, or similar activities which are determined by the Board to be equivalent to obtaining continuing education.

103.7.4.2 The Education Review Committee will review claims of equivalent education and also alternative continuing education proposed to be used for continuing education purposes.

103.7.4.3 The Board may award continuing education credit to members of the Education Review Committee, the Experience Review Committee, and the Technical Advisory Panel.

R162-103-8. Administrative Proceedings.

The Division may deny certification or renewal of certification to any course, school or instructor that does not meet the standards required by this chapter.

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R162. Commerce, Real Estate.
R162-104. Experience Requirement.
R162-104-1. Measuring Experience.

104.1.1 Except for those applicants who qualify under Section 104.17, appraisal experience shall be measured in points according to the Appraisal Experience Points Schedule in Section R162-104-18 of this rule and also in time accrued.

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 24 months. Experience for the certified residential applicants shall have been accrued in no fewer than 30 months from the date of registration, and experience for the certified general applicants shall have been accrued in no fewer than 36 months from the date of registration or licensure.

104.1.1.2 Applicants for the state-licensed category shall submit proof of at least 400 points of experience. Applicants for certified residential shall submit proof of at least 500 points of experience, and applicants for certified general shall submit proof of at least 600 points of experience.

R162-104-2. Maximum Points Per Year.

104.2 All experience points cannot be earned in one 12-month period. For applicants for certification, a maximum of 375 points will be credited for any one 12-month period. For applicants for licensure, a maximum of 300 points will be credited for any one 12-month period.

R162-104-3. Time Allowed for Meeting Experience Requirement.

104.3 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

R162-104-4. Proof of Experience.

104.4 The Division shall require the applicant to furnish the following information for each appraisal for which points are claimed: property address or legal description, date of the appraisal, type of property, and any other information deemed appropriate by the Division.

R162-104-5. Compliance with USPAP and Licensing Requirements, USPAP Limited Appraisals.

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law or the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 No experience credit toward certification will be given for appraisals if the applicant was not registered or licensed as an appraiser in Utah, or in another state if registration or licensure was required in that state, at the time the appraisal was performed.

104.5.3 For the purposes of this rule, limited appraisals are defined as opinions of value performed under, and resulting from, invoking the departure provision of USPAP, but do not include mass appraisals. Limited appraisals shall be granted 50% of the credit awarded an appraisal which is not a limited appraisal. Limited appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which is not a limited appraisal. Not more than 25% of the total experience required for licensure or certification may be earned from limited appraisals.

R162-104-7. State-Licensed and State-Certified Applicants.

104.7.1 Except for those applicants who qualify under Section 104.17, applicants applying for licensure as State-Licensed Appraisers shall be awarded points from either the Residential Experience Points Schedule or the General Experience Points Schedule for their experience prior to licensure only if the experience claimed was gained in compliance with Section 105.3.

104.7.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the points submitted from the Residential Experience Points Schedule. No more than 25% of the total points submitted may be from the General Experience Points Schedule.

104.7.3 Applicants applying for certification as State-Certified General Appraisers may claim points for experience from either the Residential Experience Points Schedule or the General Experience Points Schedule, so long as at least 50% of the total points has been earned from the General Experience Points Schedule.

R162-104-8. Cumulative Points.

104.8 The cumulative points from instruction of appraisal classes and appraisal textbook and article authorship shall not exceed 50% of the cumulative points submitted.

R162-104-9. Review or Supervision of Appraisals.

104.9 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following points shall be awarded for review or supervision of appraisals:

104.9.1 Review of appraisals which does not include a physical inspection of the property and verification of the data, commonly known as a desk review, shall be worth 20% of the points awarded to the appraisal if a separate written review appraisal report is prepared. A maximum of 100 points may be earned by desk review of appraisals.

104.9.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the points awarded to the appraisal if a separate written review appraisal report is prepared. A maximum of 100 points may be earned by field review of appraisals.

104.9.3 Supervision of appraisers shall be worth 20% of the points awarded to the appraisal. A maximum of 100 points may be earned by supervision of appraisers.

104.9.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104-9(104.9.1) through R162-104-9(104.9.3) and R162-104-11(104.11.1) and R162-104-11(104.11.3) combined.

R162-104-10. Condemnation Appraisals.

104.10 Condemnation appraisals shall be worth an additional 50% of the points normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.

R162-104-11. Preliminary Valuation Estimates, Comparative Market Analysis, Real Estate Consulting Services, and Other Real Estate Experience.

104.11.1 Preliminary valuation estimates, range of value estimates or similar studies, and other real estate related experience gained by bankers, builders, city planners and managers, or other individuals may be granted credit for up to 50% of the experience required for certification in accordance with R162-104-17 of this rule, so long as the experience demonstrates to the Board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions.

104.11.2 Comparative market analysis by real estate licensees may be granted up to 100% experience credit toward certification in accordance with R162-104-17 of this rule, when the analysis is prepared in conformity with USPAP Standards Rules 1 and 2 and the individual can demonstrate to the Board that he is using similar techniques as appraisers to value properties and effectively utilize the appraisal process.

104.11.3 Appraisal analysis, real estate counseling or consulting services, and feasibility analysis/study will be awarded experience credit in accordance with R162-104-17 of this rule for up to 50% of the experience required toward certification so long as the services were performed in accordance with USPAP Standards Rules 4 and 5.

104.11.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104-11(104.11.1) and R162-104-11(104.11.3) and R162-104-9(104.9.1) through R162-104-9(104.9.3) combined.

R162-104-12. Ad Valorem Appraisal and Benchmark Appraisal.

104.12 Ad valorem appraisal and benchmark appraisal by property type will earn the same number of points as fee appraisal where the individual can demonstrate that he performed highest and best use analysis, developed the model in model specification, or developed adjustments to the model in model calibration, and where the individual can demonstrate the appraisal was performed in accordance with Standards Rule 6 of the Uniform Standards of Professional Appraisal Practice.

R162-104-13. Experience Participation.

104.13 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards and all Advisory Opinions of USPAP, and preparation and development of the appraisal report in order to count the appraisal for experience credit. Experience credit will be granted to only one registered or licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.

R162-104-14. Unacceptable Experience.

104.14 An applicant will not receive points toward satisfying the experience requirement for licensure or certification for performing the following:

(a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or

(b) Personal property appraisals.

R162-104-15. Verification of Experience.

104.15 The Board, at its discretion, may verify the claimed experience by any of the following methods: verification with the clients; submission of selected reports to the Board; and field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-104-16. Experience Review Committee.

104.16 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification.

104.16.1 The Committee shall:

104.16.1.1 Review all applications for adherence to the experience required for licensure or certification;

104.16.1.2 Correspond with applicants concerning submissions, if necessary; and

104.16.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.

104.16.2 Committee composition. The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and ad valorem appraisers.

104.16.2.1 The chairperson of the committee shall be appointed by the Board.

104.16.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

104.16.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-104-17. Special Circumstances.

104.17 Applicants having experience in categories other than those shown on the Appraisal Experience Points Schedule, or applicants who believe the Experience Points Schedule does not adequately reflect their experience, or applicants who believe the Experience Points Schedule does not adequately reflect the complexity or time spent on an appraisal, may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may waive experience points, give an applicant credit for months of experience, or both.

104.17.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair

market value of real estate for the assessment roll may, as an alternative to using the Appraisal Experience Points Schedule, be awarded 200 points for every 12 months of service, provided that they have experience in at least three of the following categories and no more than one-third of their experience comes from any one of the following categories:

104.17.1.1 Property description/identification;

104.17.1.2 Highest and best use analysis;

104.17.1.3 Land value estimates;

104.17.1.4 Cost approach;

104.17.1.5 Sales comparison;

104.17.1.6 Income capitalization approach.

104.17.2 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the limitations in Section 105.3.

104.17.3 Fulltime investigators with the Division who perform appraisal investigations may be awarded 200 points for every 18 months of service. They are not subject to the limitations in Section 105.3.

R162-104-18. Appraisal Experience Points Schedule.

104.18 Points shall be awarded as follows:

104.18.1 Residential Experience Points Schedule. The following points shall be awarded to form appraisals. Three points may be added to the points shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, including a site	1 point
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar	
1-25 dwellings	1 point per dwelling up to a maximum of 6 points
Over 25 dwellings	A total of 10 points
(c) Two- to four-unit dwelling	4 points
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	2 points
(e) Residential lot, 1-4 family	1 point
(f) Multiple lots in the same subdivision which are substantially similar	
1-25 lots	1 point per lot up to a maximum of 6 points
Over 25 lots	A total of 10 points
(g) Small parcel up to 5 acres	1 point
(h) Vacant land, 20-500 acres	4 points
A maximum of 50 points may be awarded for appraisal of vacant land.	
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	2 points
Over 10 acres	3 points
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	1-5 points as determined by the Board
(k) Residential appraisal textbook authorship, not to exceed 20 points per year	As determined by the Board
(l) Residential appraisal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points
(m) Instructing an approved residential course of 20 classroom hours or more	10 points

104.18.2 General Experience Points Schedule. All appraisal reports claimed must be narrative appraisal reports.

TABLE 2

(a) Apartment buildings, 5-100 units	8 points
Over 100 units	10 points
(b) Hotel or motels, 50 units or fewer	6 points
51-150 units	8 points
Over 150 units	10 points
(c) Nursing home, rest home, care facilities,	
Fewer than 80 beds	8 points
Over 80 beds	10 points
(d) Industrial or warehouse building,	
Fewer than 20,000 square feet	6 points
Over 20,000 square feet, single tenant	8 points
Over 20,000 square feet, multiple tenants	10 points
(e) Office buildings	
Fewer than 10,000 square feet	6 points
Over 10,000 square feet, single tenant	8 points
Over 10,000 square feet, multiple tenants	10 points
(f) Entire condominium projects, using income approach to value	
5- to 30-unit project	6 points
31- or more-unit project	10 points
(g) Retail buildings	
Fewer than 10,000 square feet	6 points
More than 10,000 square feet, single tenant	8 points
More than 10,000 square feet, multiple tenants	10 points
(h) Commercial, multi-family, industrial, or other nonresidential use acreage	
Fewer than 10 acres	4 points
10 acres or more	6 points
100 acres or more, income approach to value	10 points
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	1 to 20 points as determined by Board
(j) Instructing an approved general appraisal course of 20 classroom hours or more, not to exceed 20 points per year	10 points
(k) Textbook authorship in general appraisal topics, not to exceed 20 points per year	As determined by Board
(l) General field journal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points
(m) Entire Subdivisions or Planned Unit Developments (PUDs)	
1- to 25-unit subdivision or PUD	6 points
Over 25-unit subdivision or PUD	10 points
(n) Feasibility or market analysis, maximum 100 points	1 to 20 points as determined by Board
Ad Valorem appraisals	
(o) Development and implementation of multiple regression model - land valuation guide, up to 5000 parcels	20 points
For each additional 5000 parcels, add 1 point	
(p) Depreciation study and analysis	20 points
(q) Sales ratio study and implementation - physical inspection and review, maximum 50 points	10 points
(r) Development of standards of practice for assessment administration and writing of those guidelines, maximum 40 points	10-20 points as determined by Board
(s) State-assessed property - gravel pits, mines, utilities	1-20 points as determined by Board

Farm and Ranch appraisals	Form	Narrative
(t) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	2 pts.	3 pts.
11-50 acres	2.5 pts.	4 pts.
51-200 acres	3 pts.	5 pts.
201-1000 acres	5 pts.	8 pts.
More than 1000 acres	8 pts.	10 pts.
(u) Dry farm, 1 to 1000 acres	3 pts.	5 pts.
More than 1000 acres	4 pts.	8 pts.
(v) Improvements on properties other than a rural residence, maximum 2 points:		
Dwelling	1 pt.	1 pt.
Sheds	0.5 pt.	0.5 pt.
(w) Cattle ranches		
0-200 head	3 pts.	4 pts.
201-500 head	5 pts.	6 pts.
501-1000 head	6 pts.	8 pts.
More than 1000 head	8 pts.	10 pts.
(x) Sheep ranches		
0-2000 head	5 pts.	6 pts.
More than 2000 head	7 pts.	9 pts.
(y) Dairies, includes all improvements		

except a dwelling		
1-100 head	4 pts.	5 pts.
101-300 head	5 pts.	6 pts.
More than 300 head	6 pts.	7 pts.
(z) Orchards		
5-50 acres	6 pts.	8 pts.
More than 50 acres	8 pts.	10 pts.
(aa) Rangeland/timber		
0-640 acres	4 pts.	5 pts.
More than 640 acres	6 pts.	7 pts.
(bb) Poultry		
0-100,000 birds	6 pts.	8 pts.
More than 100,000 birds	8 pts.	10 pts.
(cc) Mink		
0-5000 cages	6 pts.	7 pts.
More than 5000 cages	8 pts.	10 pts.
(dd) Fish farms	8 pts.	10 pts.
(ee) Hog farms	8 pts.	10 pts.
(ff) Separate grazing privileges or permits	4 pts.	5 pts.

104.18.2.1 Appraisals on commercial or multifamily form reports shall be worth 75% of the points normally awarded for the appraisal.

KEY: real estate appraisal, experience*
June 1, 2000 61-2b-1 through 61-2b-40
Notice of Continuation April 1, 1997

R162. Commerce, Real Estate.
R162-105. Scope of Authority.
R162-105-1. Scope of Authority.

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than $250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Unclassified individuals.

105.3.1 Unclassified individuals who have not yet accumulated 100 experience points and who have not successfully completed the education required for licensure may perform the following duties under the direct supervision of a state-licensed or state-certified appraiser: typing an appraiser's research notes; typing an appraisal report; accompanying an appraiser on an inspection visit to a property; assisting an appraiser in measuring a property; taking photographs of specific properties selected and inspected by the appraiser; performing routine calculations; and obtaining copies of assessment records, deeds, maps, and data from real property data bases relating to properties selected by the appraiser.

105.3.1.1 The unclassified individual may accumulate the first 100 experience points with each duty listed in the following table being worth 20% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1. or 104-18.2. not to exceed the maximum number of points awarded for each property. Applicants must have experience in at least five of the following categories and no more than one-third of the experience can come from any one of the following categories.

(a) type an appraiser's research notes - 20% of total points

(b) type an appraisal report - 20% of total points

(c) accompany an appraiser on an inspection visit - 20% of total points

(d) assist an appraiser in measuring property - 20% of total points

(e) take photographs of specific properties selected and inspected by the appraiser - 20% of total points

(f) perform routine calculations - 20% of total points

(g) obtain copies of assessment records, deeds, maps and data from real property databases relating to properties selected by the supervising appraiser - 20% of total points

105.3.1.2. Unclassified individuals who have not yet accumulated 100 experience points and who have not successfully completed the education required for licensure may not participate in: selecting comparables for an appraisal assignment; making adjustments to comparables; drafting an appraisal report; and, except when working in the presence of a state-licensed or state-certified appraiser, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, or measuring a property.

105.3.2. Unclassified individuals who have accumulated 100 experience points and have successfully completed at least 30 hours of the education required for licensure may act in the capacity of an appraisal "trainee" under the direct supervision of a state-licensed or state-certified appraiser. A "trainee" is permitted to have more than one supervising appraiser.

105.3.2.1. An appraiser "trainee" may, under the direct supervision of a state-licensed or state-certified appraiser, participate in selecting comparables for an appraisal assignment, participate in making adjustments to comparables, draft appraisal reports, and when working in the presence of a state-licensed or state-certified appraiser, inspect a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measure a property.

105.3.2.2. The unclassified individual who is a "trainee" may accumulate the experience points with each duty listed in the following table being worth 33.3% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1. or 104-18.2. not to exceed the maximum number of points awarded for each property. "Trainee" experience must be earned in at least three of the following categories and no more than one-third of their experience can come from any one of the following categories.

(a) participate in selecting comparables for an appraisal assignment - 33.3% of total points

(b) participate in making adjustments to comparables - 33.3% of total points

(c) draft appraisal reports - 33.3% of total points

(d) when working in the presence of a state-licensed or state-certified appraiser, inspect a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measure the property - 33.3% of total points

105.3.3. All experience points cannot be earned in one 12-month period. For applicants for licensure, a maximum of 300 points will be credited for any one 12-month period. Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application. Applicants who believe the Experience Points Schedule does not adequately reflect their experience may refer to Section 104-17.

105.3.4. All unclassified individuals are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for

the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.5. A classified appraiser who supervises an unclassified individual shall be responsible for the training and direct supervision of the unclassified individual.

(a) Type of property;

(b) Address of appraised property;

(c) Description of work performed;

(d) Number of work hours;

(e) Signature and state license/certification number of the supervising appraiser.

105.3.6. The unclassified individual may maintain a separate appraisal log for each supervising appraiser.

KEY: real estate appraisal
June 1, 2000 61-2b

R162. Commerce, Real Estate.
R162-107. Unprofessional Conduct.
R162-107-1. Unprofessional Conduct.

107.1 Unprofessional conduct includes the following specific acts or omissions:

107.1.1 Violating or disregarding a disciplinary order of the Utah Appraiser Licensing and Certification Board or the division;

107.1.2 Signing an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property;

107.1.3 Signing an appraisal report as the supervising appraiser without having given adequate supervision to the registered appraiser or the unclassified assistant;

107.1.4 Allowing an appraiser in his employ, or an appraiser whom he is otherwise responsible to supervise, to:

(a) exceed the authority of the subordinate appraiser's classification;

(b) engage in conduct which is a violation of Title 61, Chapter 2b.

107.1.5 Allowing a non-appraiser to:

(a) exceed the authority granted to an unclassified person by these rules;

(b) engage in conduct which would be a violation of Title 61, Chapter 2b if done by an appraiser; or

107.1.6 Splitting appraisal fees with an unclassified person, except that an unclassified person may be paid a reasonable salary or a reasonable hourly rate for lawful services actually performed in connection with appraisals.

107.2 The Board may appoint members of the appraisal industry to serve as a Technical Advisory Panel to provide advice to the Division concerning technical appraisal issues and conduct constituting unprofessional conduct.

KEY: real estate appraisal, conduct
June 1, 2000 61-2b-8

R164. Commerce, Securities.
R164-11. Registration Statement.
R164-11-1. General Registration Provisions.

A. Preliminary Notes

(1) This R164-11-1 applies to public offerings registered by notification, coordination or qualification pursuant to Sections 8, 9 and 10 of the Utah Uniform Securities Act (the "Act"), except this rule shall not apply to offerings which are registered in twenty or more states, including the state of Utah.

(2) The purpose of the rule is to ensure full disclosure of material information, prohibit offerings which tend to work a fraud on purchasers and prohibit unreasonable amounts of promoters' profits.

(3) Failure to comply with the provisions of this rule shall be grounds for denial, suspension or revocation of the effectiveness of a registration statement.

(4) For purposes of this rule "development stage companies" shall mean those companies that devote substantially all of their efforts to acquiring or establishing a new business and in which either: 1) planned principal operations have not commenced or 2) there have been no significant revenues therefrom.

(5) Selected requirements of this rule may be waived by the Utah Securities Division ("Division") where an applicant makes a specific request for a waiver and the Division finds that such requirement(s) is/are not necessary or appropriate for the protection of investors.

(6) This rule applies to all registration statements filed on or after February 15, 1986.

B. NASAA Statements of Policy

All registration statements for oil and gas programs, church bonds, real estate investment trusts, publicly-offered cattle-feeding programs, real estate programs and equipment programs must satisfy the provisions of the appropriate statements of policy adopted by the North American Securities Administrators Association ("NASAA").

Offerings which are required under this paragraph B to satisfy, and do satisfy, the provisions of a NASAA statement of policy shall not be required to satisfy the provisions of paragraphs C and D of this R164-11-1.

C. Promoters' Investment in Development Stage Companies

An investment by promoters and shareholders in a development stage company shall be required as follows:

(1) Corporate Equity and Debt Offerings.

Prior to and during the effectiveness of a registration statement, where the registrant is the issuer, pertaining to an offering of securities which are corporate equity securities, which are securities convertible into corporate equity securities or which are corporate debt securities, the corporation shall have equity equal to at least the lesser of: 1) ten percent (10%) of the aggregate offering price of the securities which are registered or to be registered or 2) fifty thousand dollars ($50,000). Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash and retained earnings. Retained deficits will not reduce the equity of the company for purposes of this subparagraph. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph.

NOTE: Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the registrant, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(2) Partnership and Trust Certificate Offerings.

Prior to the effectiveness of a registration statement relating to partnership units, the registrant shall meet one of the following requirements:

(a) The general partner(s), promoter(s), and/or manager(s) have paid, in cash, at least an amount equal to five percent (5%) of the aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer; or

(b) The general partner(s), promoter(s), and/or manager(s) have the ability to pay and commit themselves to pay, in cash, the lesser of: 1) five percent (5%) of the aggregate offering price of the securities to be registered or 2) fifty thousand dollars ($50,000); or

(c) The general partner(s), promoter(s), and/or manager(s) have an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to ten percent (10%) of the aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

D. Business Plan and Use of Proceeds for Development State Companies

In a development stage company the business plan and the use of offering proceeds must be disclosed with specificity in the offering prospectus.

Where eighty percent (80%) or more of the net offering proceeds (total offering proceeds less offering expenses and commissions) is not specifically allocated for the purchase, construction or development of identified properties or products, discharge of indebtedness, payment of overhead, etc., the registrant shall comply with the following provisions:

(1) Eighty percent (80%) of the net offering proceeds shall be escrowed in a manner approved by the Division. The escrow shall continue until the registrant can specifically allocate the use of the proceeds, at which time the registrant shall amend or supplement the registration statement to disclose all material information concerning the proposed use of proceeds. Such disclosure shall be in the same form and quality as required in a registration statement.

(2) At the time of the amendment or supplement to the registration statement, the investors in the offering must be given no less than twenty (20) days to ratify or rescind his/her investments. Investors who choose to rescind his/her investments shall receive a pro rata refund of all offering proceeds. However, should enough investors request a refund such that the net tangible asset value of the company after the refund would be less than seventy-five thousand dollars ($75,000) the registrant shall make a pro rata refund of all

unused offering proceeds to investors.

(3) The registrant shall not issue stock, deliver stock certificates or allow secondary trading of the stock until the offering proceeds have been released to the registrant.

E. Employment of Agents by Issuers

An issuer shall not employ agents to sell securities which are the subject of the registration statement until: 1) such agent is registered with the Division as an agent of the issuer; and 2) the issuer has filed with the Division a surety bond in the amount of twenty-five thousand dollars ($25,000) conditioned on the agents compliance with the Utah Uniform Securities Act and the rules of the Securities Division of the Utah Department of Commerce and covering the effective period of the issuer's registration statement.

R164-11-7b. Fund Impound.

A. Preliminary Notes

(1) R164-11-7b applies only to public offerings which are registered by qualification pursuant to Section 10 of the Utah Uniform Securities Act (the "Act") and the rules thereunder.

(2) This R164-11-7b and R164-10-2 both require certain documents to be filed and provide that failure to comply with these requirements is cause for denial, suspension or revocation of the effectiveness of a registration statement.

(3) This rule R164-11-7b is a statement of what has been the position of the Utah Securities Division (the "Division") in the past under Rule A67-03-12 and applies to all registration statements which become effective on or after May 10, 1983.

B. Term of Impound

(1) The applicant for registration by qualification under Section 10 of the Act and the rules thereunder may choose a term of not less than one month and not more than one year from the effective date of the registration statement.

(2) The term of the impound shall be expressed by the number of months and shall not be expressed by the number of days.

C. Amount to be Impounded

(1) The amount to be impounded shall be the greater of:

(a) Twenty-five percent of the aggregate offering price of the securities to be registered plus offering expenses; OR

(b) The minimum amount required to sustain the business proposed by the registrant for one full year from the release of the impound; OR

(c) The minimum amount proposed to be sold by the applicant pursuant to the registration statement.

D. Where Funds are to be Impounded

Funds may be impounded at any federal or state bank or savings institution.

E. Conditions of Impound

(1) The applicant shall file a completed FORM 11-7b with the Division as part of the registration statement.

(2) The conditions of impound are stated on FORM 11-7b and are herein incorporated as requirements of this R164-11-7b.

F. Release of Impounded Funds

(1) The impounded funds shall be released only by an ORDER OF THE DIVISION.

(2) The impounded funds shall be released to the registrant where:

(a) All registration requirements which, pursuant to the rules of the Division needed to be met by such date, have been met;

(b) The registrant requests the release in writing; and

(c) The Division receives written confirmation from the financial institution impounding the funds of the amount which has been deposited into the impound.

G. Certain Registrants

Where the registrant in a registration by qualification is a security holder who is not conducting a public offering for or on behalf of the issuer of the securities which are to be sold in the offering, no fund impound is required by this R164-11-7b; provided, however, that where an offering has a "minimum" required to be sold in order to consummate the transaction, a fund impound is required.

KEY: securities regulation
1987 61-1-11(7)(b)
Notice of Continuation November 13, 1997

R164. Commerce, Securities.
R164-12. Sales Commission.
R164-12-1f. Commissions on Sales of Securities.

A. Preliminary Notes

(1) This R164-12-1f regulates the compensation which may be received by any person in connection with a public offering of securities pursuant to a registration by qualification under Section 10 of the Utah Uniform Securities Act (the "Act"). The Rule does not effect offerings which are registered by notification or coordination or offerings which are sold pursuant to an exemption from the Act.

(2) This R164-12-1f does not effect the requirements of the Act and the rules thereunder as to registration, supervision and termination of agents.

(3) This R164-12-1f is an extended version of the standards that the Utah Securities Division (the "Division") has in the past required to be met. The standards herein are based upon reasonableness, the NASAA guidelines as to options and warrants issued to underwriters, and the NASD's interpretations of fair compensation. The percentage of cash commissions that is permitted under this R164-12-1f is unchanged from the former Rule A67-03-12.

B. Persons Subject to this Rule

(1) This R164-12-1f regulates compensation to participants in a distribution of securities which are registered by qualification pursuant to Section 10 of the Act and the rules and regulations thereunder.

(2) No registrant, affiliate of a registrant, or person acting on behalf of a registrant in connection with a public offering registered pursuant to Section 10 of the Act may give, directly or indirectly, compensation which is in violation of this R164-12-1f.

(3) No agent, underwriter or affiliate of an agent or underwriter may receive, directly or indirectly in connection with a public offering registered pursuant to Section 10 of the Act, compensation which is in violation of this R164-12-1f.

C. Definitions

As used in this R164-12-1f, the following terms shall have the indicated meanings:

(1) "Compensation" includes all cash; the value of all options, warrants, rights and other securities; the gross amount of the underwriter's discount; total expenses payable by the issuer, whether accountable or non-accountable, to or on behalf of the participant in the distribution which would normally be paid by the participant in the distribution; counsel's fees and expenses of the participant in the distribution payable by the issuer; finder's fees; financial consulting and advisory fees; and the value of all contracts and agreements with respect to the issuer or its affiliates which are connected with the distribution or with the negotiation of compensation in the distribution.

(2) "Corporate equity security" means any security which presently represents an ownership interest in a corporate entity and which includes common stock and preferred stock but does not include a security which is not presently, but is at some future time convertible into, a corporate equity security.

(3) "Participant in the distribution" means any person offering, selling, delivering, distributing, soliciting interest in or otherwise involved in the distribution, offer or sale of securities to the public or to any member of the public and includes persons commonly known as underwriters, agents and finders.

D. Maximum Compensation

(1) Distributions of Corporate Equity Securities: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of corporate equity securities is an amount equal to 15% of that portion of the public offering price of the securities being distributed which is actually received by or on behalf of the registrant; provided, however, that any securities issued in connection with such distribution comply with paragraph F of this R164-12-1f.

(2) All Other Distributions: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of securities other than corporate equity securities shall be 20% of that portion of the public offering price of the securities being sold which is actually received by or on behalf of the registrant; provided, however, that any securities issued also comply with paragraph F of this R164-12-1f.

E. Determination of Amount Received by or on Behalf of the Registrant

The amount of the public offering price which is actually received shall be determined as follows:

(1) The following shall be included:

(a) Cash received;

(b) Fair market value of any securities received; and

(c) Fair market value of any tangible property received excluding items listed in subparagraph E(2) of this R164-12-1f.

(2) The following shall be excluded:

(a) Promissory notes or similar promises to provide cash or property in the future;

(b) Assessments, whether conditional or obligatory; and

(c) Intangible property such as patents, royalties, etc.

F. Securities Issued to Participants in a Distribution

(1) Options or Warrants:

Options or warrants issued to participants in a distribution must be justified by the applicant. Options or warrants will be considered justified if all of the conditions of this paragraph F are met.

(a) The options or warrants are issued only to a broker-dealer registered with this Division and are not transferable except in cases where the broker-dealer is a partnership and then only within the partnership.

(b) The number of shares covered by all options or warrants does not exceed ten percent of the shares to be outstanding upon completion of the offering.

(c) The options or warrants do not exceed five years in duration and are exercisable no sooner than one year after issuance.

(d) The initial exercise price of the options or warrants is at least equal to the public offering price plus a step-up of said public offering price of either seven per cent each year they are outstanding, so that the exercise price throughout the second year is one hundred seven per cent, throughout the third year one hundred fourteen per cent, throughout the fourth year one hundred twenty-one per cent, throughout the fifth year one hundred twenty-eight per cent; or in the alternative, twenty per cent at any time after one year from the date of issuance; provided that an election as to either alternative must be made by the broker-dealer at the time that the options or warrants are issued.

(e) The options or warrants are issued by a relatively small company, which is in the promotional stage, or which, because of its size, lacks public ownership of its shares, or other facts and circumstances make it appear that the issuance of options is necessary to obtain competent investment banking services.

(f) The prospectus used in connection with the offering fully discloses the terms and the reason for the issuance of such options or warrants; provided that if such reason relates to future advisory services to be performed by the broker-dealer without compensation in consideration for the issuance of such options or warrants, a statement to that effect is placed in the prospectus.

(g) The total amount of options and warrants issued or reserved for issuance at the date of the public offering shall be reasonable. The amount of options and warrants shall be presumed reasonable if the number of shares represented by such options and warrants does not exceed a number equal to ten per cent of the number of shares outstanding during the period the registration is in effect. The number of options and warrants reserved for issuance may be disregarded if the issuer files an undertaking or states in the prospectus that the amount of outstanding options and warrants shall not exceed the above limitation during the period the registration is in effect.

(2) The value of any securities received, which value shall be included in determining the amount of compensation for the purposes of paragraph D of this R164-12-1f shall be as follows:

(a) Options/Warrants: The market value of such options or warrants, if any, shall be used. In cases where no market value exists, a presumed fair value of twenty per cent of the public offering price of the shares to which the options or warrants pertain shall be used, unless evidence indicates that a contrary valuation exists.

(b) Stock: The amount of compensation received when stock is issued shall be the difference between the cost of such stock and the proposed public offering price or, in the case of securities with a bona fide independent market, the cost of such stock and price of the stock on the market on the date of purchase. If, however, there is a binding obligation to hold such stock for a substantial period of time, an adjustment in such valuation may be made.

(c) Convertible Securities: The amount of compensation received when convertible securities are issued shall be the difference between the conversion price and the proposed public offering price or, in the case of securities with a bona fide independent market, the conversion price and the price of the stock on the market on the date of purchase.

(3) Equity Securities Issued to Participants in a Distribution:

Equity securities or securities convertible into equity securities, when combined with securities issued pursuant to subsection (F)(1) of this Rule, acquired by a participant in a distribution, whether acquired prior to, at the time of, or after, but which are determined to be in connection with or related to, the offering shall not in the aggregate be more than ten percent of the total number of units being offered in the proposed offering. The maximum limitation in the case of "best efforts" underwritings or participations shall be on the basis of no more than one unit received for every ten units actually sold. For the purposes of this paragraph:

(a) No securities shall be issued to a participant in a distribution where such participant is not a broker-dealer registered with this Division;

(b) Over-allotment shares and shares underlying warrants, options, or convertible securities which are part of the proposed offering are not to be counted as part of the aggregate number of shares being offered against which the ten percent limitation is to be applied.

(c) In an exceptional or unusual case involving an offering of convertible securities of a company whose stock already has a public market and where the circumstances require, taking into consideration the conversion terms of the securities to be received by the above persons, the receipt of underlying shares by such persons aggregating the above referred to ten percent limitation may be considered improper and a lesser amount considered more appropriate.

(d) In an exceptional or unusual case, where a large number of shares of a company are already outstanding and/or the purchase price of the securities, risk involved or the time factor as to acquisition or other circumstances justify, a variation from the above limitations may be permitted but in all cases the burden of demonstrating justification for such shall be upon the person seeking the variation.

KEY: securities regulation
1987 61-1-12(1)(f)
Notice of Continuation November 13, 1997

R164. Commerce, Securities.
R164-14. Exemptions.
R164-14-1g. Exchange Listing Exemption.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(1)(g) and Section 61-1-24.

(2) The rule identifies additional exchanges for which the exemption under Subsection 61-1-14(1)(g) is available.

(3) The rule also states the procedure whereby confirmation of the availability of the exemption can be obtained.

(B) Definitions

(1) "Confirmation" means written confirmation of the exemption from registration from the Division.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Exchange Tiers" means the different levels, groups or markets within an exchange or medium, whereby each level requires substantively different, as opposed to alternate and comparable, listing and maintenance criteria.

(4) "Exemption" means the exemption provided in Subsection 61-1-14(1)(g).

(C) Recognized exchanges

(1) As specifically provided in Subsection 61-1-14(1)(g), a security listed on one of the following exchanges or mediums is exempt from registration:

(1)(a) New York Stock Exchange

(1)(b) American Stock Exchange

(1)(c) National Association of Securities Dealers Automated Quotation System ("NASDAQ").

(2) In addition, a security listed on one of the following exchanges or mediums is exempt from registration:

(2)(a) Chicago Board Options Exchange

(2)(b) Pacific Stock Exchange

(2)(c) Philadelphia Stock Exchange

(3) A security listed on one of the following exchanges or mediums is exempt from registration for the limited purpose of nonissuer transactions effected by or through a licensed broker-dealer:

(3)(a) Boston Stock Exchange

(3)(b) Chicago Stock Exchange

(3)(c) NASDAQ Small Cap Market

(3)(d) Pacific Stock Exchange/Tier II

(3)(e) Philadelphia Stock Exchange/Tier II

(D) Listed securities

(1) As to securities listed with a recognized exchange or medium, the exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(E) Securities approved for listing

(1) A security which is "approved for listing upon notice of issuance" on a recognized exchange or medium enumerated in Subparagraph (C)(1) or (2) of this rule qualifies for the exemption. The exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(F) Senior or substantially equal rank securities

(1) An unlisted security of the same issuer which is of senior or substantially equal rank to the security listed on a recognized exchange or medium enumerated in Subparagraph (C)(1) or (2) of this rule qualifies for the exemption. The exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(G) Delisted or suspended securities

(1) If a listed security becomes delisted or suspended, the exemption is not available to the security or a senior or substantially equal rank security for the period during which the security is delisted or suspended.

(H) Requests for confirmation

(1) A confirmation from the Division may be requested by any person.

(2) The request for confirmation must include documentary proof of the listing or approval for listing upon notice of issuance with the recognized exchange or medium which is relied upon as the basis for the exemption.

(3) The required documentary proof must indicate, where applicable, that the listing is current and must include:

(3)(a) a signed copy of the listing agreement;

(3)(b) a copy of the receipt for payment; or

(3)(c) a signed copy of a letter from the recognized exchange or medium with which the security is listed which acknowledges listing and the effective date thereof, or acknowledges approval for listing upon notice of issuance.

(4) Each request for confirmation must include a filing fee as specified in the Division's fee schedule.

(5) In response to a complete request for confirmation, the Division will issue a letter confirming the availability of the exemption.

(6) The Division will issue a copy of the letter confirming the availability of the exemption to any person so requesting in writing or in person for the cost of the photocopying.

(I) Exchange tiers

(1) Except as provided in Subparagraph (I)(2) of this rule, where a recognized exchange or medium has more than one tier, the exemption applies only to the highest tier.

(2) The exemption applies to a lower tier of a recognized exchange or medium if the lower tier is specifically named in this rule.

R164-14-2b. Manual Listing Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(b) and Section 61-1-24.

(2) The rule specifies recognized securities manuals.

(3) The rule prescribes the information upon which each listing must be based to qualify for the exemption.

(4) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(b).

(4)(a) Except as provided in Paragraph (H), the exemption is not self-executing and may not be relied upon until the Division confirms the exemption as provided below.

(4)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(B) Definitions

(1) "Blank-check company" means a development stage

company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose; or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(b) of the Act.

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(10) "Significant change" means any change involving a reorganization, merger, acquisition, or other change which causes the issuer to increase its issued and outstanding shares of stock by at least 40% of the issued and outstanding shares before the change.

(C) Recognized securities manuals

(1) The Division recognizes the following securities manuals:

(1)(a) Standard and Poor's Corporation Records

(1)(b) Mergent's Industrial Manual

(1)(c) Mergent's Bank and Finance Manual

(1)(d) Mergent's Transportation Manual

(1)(e) Mergent's OTC Industrial Manual

(1)(f) Mergent's Public Utility Manual

(1)(g) Mergent's OTC Unlisted Manual

(1)(h) Mergent's International Manual

(D) Information upon which listing must be based

(1) A listing must be based upon the following information, which must be filed with the selected recognized securities manual:

(1)(a) the issuer's name, current street and mailing address and telephone number;

(1)(b) the names and titles of the executive officers and members of the board of directors of the issuer;

(1)(c) a description of the issuer's business;

(1)(d) the number of shares of each class of stock outstanding at the balance sheet date; and

(1)(e) the issuer's annual financial statements as of a date within 18 months which have been prepared in accordance with generally accepted accounting principles, and audited by an independent certified public accountant who has issued an unqualified opinion; if the issuer has been organized for less than one year, the financial statements must be for the period from inception.

(E) Confirmation requirement

(1) Except as provided in Paragraph (H), confirmation must be obtained prior to relying upon the exemption.

(2) A request for confirmation must include:

(2)(a) all information filed with the selected recognized securities manual;

(2)(b) a copy of the listing with the recognized securities manual which is based upon the information filed under paragraph (D); and

(2)(c) a filing fee as specified in the Division's fee schedule.

(3) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.

(4) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.

(F) Term of exemption

(1) Except as provided in Subparagraph (F)(2), the exemption becomes effective on the date confirmed by the Division.

(2) The exemption for the securities of an issuer which qualify under Paragraph (H) becomes effective on the date a listing, based upon the information required under Paragraph (D), is published in a recognized securities manual.

(3) The exemption shall expire upon the earliest of:

(3)(a) A date 18 months from the date of the annual financial statements required under paragraph (D);

(3)(b) The date of a new annual issue or edition of the recognized securities manual which does not contain a listing based upon the information required under paragraph (D);

(3)(c) A date 45 calendar days from a change in the Chairman of the Board of Directors or a change in any two other members of the Board of Directors unless the recognized securities manual has published this information within the 45 days; or

(3)(d) A date 90 calendar days after a significant change in the issuer unless the recognized securities manual has published, at a minimum, an audited balance sheet and income statement reflecting the significant change within the 90 days.

(G) Blank-check, blind-pool, dormant, or shell company

(1) The exemption is not available to a blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal

years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) with the recognized securities manual, the information required under paragraph (D), as to all parties to such transaction;

(2)(b) with the Division, the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant or shell company; and

(2)(c) with the Division, the shareholders list of the company, current within thirty days of the request for confirmation of the exemption.

(H) Exceptions to confirmation requirement

(1) Confirmation prior to relying upon the exemption shall not be required for any security if at the time of the transaction:

(1)(a) the security is sold at a price reasonably related to the current market price of such security;

(1)(b) the security does not constitute the whole or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(1)(c) the security has been outstanding in the hands of the public for at least 90 days;

(1)(d) the issuer of the security is a going concern, actually engaged in business and is not in the development stage, in bankruptcy or receivership;

(1)(e) the issuer of the security has been in continuous operation for at least five years; and

(1)(f) the information required by Paragraph (D) is contained in a recognized securities manual listed in Paragraph (C).

R164-14-2m. Secondary Trading Transactional Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(m) and Section 61-1-24.

(2) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(m).

(2)(a) The exemption is not self-executing. It may not be relied upon until the Division confirms the exemption as provided below.

(2)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(2)(c) The exemption is available only for transactions effected by or through a broker-dealer licensed with the Division.

(B) Definitions

(1) "Blank-check company" means a development stage company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose; or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(m).

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(C) Request for confirmation

(1) The broker-dealer or issuer should file a request for confirmation with the Division in advance of the expiration of the previous registration statement or exemption to provide the Division a reasonable period of time in which to review the request.

(2) A request for confirmation must include the information required in paragraph (D).

(3) A request for confirmation must include a fee as specified in the Division's fee schedule.

(4) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.

(5) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.

(D) Required information

(1) A reporting company which is required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the preceding year must file one copy of the registration statement or the most recent Form 10-K which was filed with the Securities and Exchange Commission and containing financial statements dated not more than 15 months prior to this filing.

(2) A non-reporting company must file:

(2)(a) The following information:

(2)(a)(i) The exact name of the issuer and its predecessor(s), if any;

(2)(a)(ii) The street address of the issuer's principal executive offices;

(2)(a)(iii) The state of and date of incorporation or organization of the issuer;

(2)(a)(iv) The exact title and class of security for which the exemption is sought;

(2)(a)(v) The par or stated value of the security for which the exemption is sought;

(2)(a)(vi) The number of public, and restricted securities outstanding as of the end of the issuer's most recent fiscal year and a statement as to the date of the last fiscal year end;

(2)(a)(vii) The name and street address of the transfer agent for the securities for which the exemption is sought;

(2)(a)(viii) A description of the nature of the issuer's business;

(2)(a)(ix) A description of the products or services offered by the issuer;

(2)(a)(x) A description of the nature and extent of the issuer's facilities;

(2)(a)(xi) The names, titles and terms of office of the executive officers and members of the board of directors;

(2)(a)(xii) The names and street addresses of broker-dealers in Utah or associated person affiliated, directly or indirectly, with the issuer of the securities for which the exemption is sought.

(2)(b) Financial statements for the issuer's most recent fiscal year which meet all of the following requirements:

(2)(b)(i) be audited or reviewed by an independent Certified Public Accountant (CPA);

(2)(b)(ii) be prepared in conformity with Generally Accepted Accounting Principles (GAAP);

(2)(b)(iii) be prepared in conformity with Generally Accepted Auditing Standards (GAAS), Statements on Standards for Accounting and Review Services (SSARS), or both;

(2)(b)(iv) contain an unqualified audit opinion, where an audit is performed, except that certain qualifications may be allowed in certain circumstances at the discretion of the Division;

(2)(b)(v) contain an accountant's report stating that no material modifications are necessary for the financial statements to conform with GAAP, where a review is performed;

(2)(b)(vi) contain the signature of the preparer of the financial statements;

(2)(c) Financial statements of the issuer for the two fiscal years preceding the most recent fiscal year or for the time the issuer or its predecessor(s) has been in existence. The requirements of paragraph (D)(2)(b) also apply to these financial statements;

(2)(d) Financial statements, dated within 30 days before the merger or acquisition, of the corporation, partnership, or proprietorship which was acquired by or merged with the issuer during the issuer's most recent fiscal year. The requirements of paragraph (D)(2)(b) also apply to these financial statements;

(2)(e) A statement that the person submitting the information has read all of the information submitted and that to the best of his knowledge the information is accurate and complete;

(2)(f) If a broker-dealer is submitting the information, the original signature of the licensed official of the broker-dealer beneath the statement required by item (e) of this paragraph (D)(2) and the signatory's name and street address typed or printed beneath it;

(2)(g) If an issuer is submitting the information, the original signature of a current executive officer or director of the issuer beneath the statement required by item (e) of this paragraph(D)(2) and the signatory's name and street address typed or printed beneath it;

(2)(h) Copies of all complaints and orders with respect to material litigation that occurred during the past five years involving the issuer, the assets, liabilities, or both of the issuer, the securities of the issuer, or any officer or director of the issuer; and

(2)(i) Other documents as the Division may request.

(E) Amended information

(1) The required information filed pursuant to paragraph (D) may be amended by forwarding the correct information to the Division and requesting that the file be amended accordingly.

(2) If the amended information indicates that the issuer has changed its fiscal year, an amendment will not be permitted and the information will be treated as a new request for exemption.

(3) No fee is required for an amendment.

(F) Term of exemption

(1) The exemption becomes effective upon the date confirmed by the Division to the earliest of:

(1)(a) A date three months after the issuer's next fiscal year end; or

(1)(b) A date ten working days from the date of any shareholders meeting unless all material changes resulting from the meeting have been filed pursuant to paragraph (E); or

(1)(c) A date 30 calendar days from the date of any material change, not resulting from a shareholder vote, unless information with respect to the material change has been filed pursuant to paragraph (E).

(G) Blank-check, blind-pool, dormant, or shell company

(1) A blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division may not rely upon the exemption.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) the information specified in paragraph (D), as to all parties to the transaction;

(2)(b) the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant, or shell company; and

(2)(c) the shareholders list of the company current within thirty days of the request for confirmation of the exemption.

(H) Miscellaneous

(1) The information contained in broker-dealers' files and the information which they use to solicit transactions relying upon the exemption must be kept current.

(2) In no event does compliance with the requirements of this rule relieve broker-dealers or their agents from any obligations imposed by Section 61-1-1 or 61-1-6 or the rules thereunder.

R164-14-2n. Uniform Limited Offering Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(n) and Section 61-1-24.

(2) Nothing in this rule is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of Section 61-1-1.

(3) In view of the objective of this rule and the purposes and policies underlying Section 61-1-1 et seq., the safe-harbor exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

(4) Nothing in this rule is intended to relieve a licensed broker-dealer or broker-dealer agent from the due diligence, suitability, know-your-customer standards, or any other requirements of state or federal law otherwise applicable to such licensed persons.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Safe-harbor exemption" means the exemption provided in this rule.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Safe-harbor exemption

Any offer or sale of securities offered or sold in compliance with SEC Rule 505, Exemption for Limited Offers and Sales of Securities Not Exceeding $5,000,000, 17 CFR 230.505 (1993), including any offer or sale made exempt by application of SEC Rule 508, Insignificant Deviations from a Term, Condition or Requirement of Regulation D, 17 CFR 230.508 (1993), which are adopted and incorporated by reference and available from the SEC and the Division, and which offer or sale of securities satisfies the following further conditions and limitations is determined to be exempt from the registration requirement of Section 61-1-7:

(1) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately licensed with the Division.

(a) It is a defense to a violation of this paragraph if the issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately licensed with the Division.

(2) The safe-harbor exemption shall not be available for the securities of any issuer if any of the parties described in SEC Rule 262, Disqualification Provisions, 17 CFR 230.262 (1994), which is adopted and incorporated by reference and available from the Division:

(a) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law.

(b) Has been convicted within five years prior to the filing of the notice required under this rule of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(c) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this rule or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this rule.

(d) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

(e) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this rule.

(f) The prohibitions of Subparagraphs (a) through (c) and (e) above shall not apply if the person subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed with the Division and SEC Form BD - Uniform Application for Broker-Dealer Registration, July 1988, filed with the CRD discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this paragraph may act in a capacity other than that for which the person is licensed.

(g) Any disqualification caused by this paragraph is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines that it is not necessary that the safe-harbor exemption be denied.

(h) It is a defense to a violation of this paragraph if issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.

(D) Notice requirement

(1) The issuer shall file with the Division:

(a) One manually-signed copy of SEC Form D, 17 CFR 239.500 (1993), no later than 15 days after the first sale of securities in Utah in reliance upon this safe-harbor exemption and at such other times and in the form required to be filed with the Securities and Exchange Commission under SEC Rule 503, Filing of Notice of Sales, 17 CFR 230.503 (1993);

(b) One copy of the information furnished by the issuer to offerees located within the state;

(c) NASAA Form U-2 - Uniform Consent to Service of Process, which is available from NASAA or the Division; and

(d) A fee as specified in the Division's fee schedule.

(2) Within 30 days after termination of the offering the

issuer shall file with the Division one completed Division Form 14-2n, Uniform Limited Offering Exemption Final Report.

(E) Sales to nonaccredited investors

(1) In all sales to nonaccredited investors in this state one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

(a) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.

(b) The purchaser either alone or with a representative has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(F) Effect upon exemption from Section 61-1-7 of failure to comply with certain provisions

A failure to comply with a term, condition or requirement of Subparagraph (C)(1) or Paragraphs (D) or (E) of this rule will not result in loss of the exemption from the requirements of Section 61-1-7 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(1) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(2) the failure to comply was insignificant with respect to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1), or Paragraphs (D) or (E) of this rule.

(G) Limitation of exemption established in reliance upon Paragraph (F)

Where an exemption is established only through reliance upon Paragraph (F) of this rule, the failure to comply shall nonetheless be actionable by the director under Section 61-1-14 or 61-1-20.

(H) Prohibition against combining exemption with other exemptions

Transactions which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions of this safe-harbor exemption, the issuer may claim the availability of any other applicable exemption.

(I) Authority to modify or waive conditions

The director may, by order, increase the number of purchasers or waive any other conditions of this safe-harbor exemption.

(J) Title

The safe-harbor exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

R164-14-2p. Reorganization Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(p) and Section 61-1-24.

(2) The rule sets forth the exclusive method of claiming the exemption contained in Subsection 61-1-14(2)(p). The exemption is not self-executing.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Exemption" means the exemption provided in Subsection 61-1-14(2)(p).

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Filing Requirements

Persons whose security holders are to consent, vote or resolve as to a transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets may claim the exemption by filing with the Division, not less than ten business days prior to any necessary vote or action on any necessary consent or resolution, all of the following:

(1) the proxy or informational materials required by Paragraph (D);

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a fee as specified in the Division's fee schedule; and

(4) other documents as the Division may request.

(D) Proxy or informational materials

The Proxy or informational materials to be filed with the Division pursuant to Subparagraph (C)(1) and distributed to all securities holders entitled to vote in the transaction or series of transactions shall be:

(1) the proxy or informational materials filed under Section 14(a) or (c) of the Securities Exchange Act of 1934 if any person involved in the transaction is required to file proxy or informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 and has so filed;

(2) the proxy or informational materials filed with the appropriate regulatory agency or official of its domiciliary state if any person involved in the transaction is an insurance company who is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934; or

(3) one manually signed Form 14-2p and the information specified in SEC Schedule 14A, Form S-4, or Form F-4 if all persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934.

(E) Transactions eligible for exemption

For purposes of Subsection 61-1-14(2)(p)(i), "each person involved" includes each person whose securities are offered or sold to or purchased from the securities holders of such persons.

R164-14-2s. MJDS - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides a secondary trading exemption for securities offered by Canadian issuers which have been offered in the United States pursuant to MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in any class of a Canadian issuer's security which has been offered pursuant to Section 61-1-9 and MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC and the Division.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-21s. Solicitations of Interest Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) The rule enables an issuer to solicit indications of interest in a future offering of securities by the issuer to determine the likelihood of success of the offering before incurring costs associated with registering the offering.

(3) All communications made in reliance on this rule are subject to the anti-fraud provisions of Section 61-1-1.

(4) The Division may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

(5) Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Section 61-1-22. Likewise any misrepresentation or omission may give rise to civil liability. Under the Act, a subsequent registration of the security for the sale of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a "cure."

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Director" means the director of the Division of Securities, Utah Department of Commerce.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Requirements

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus, or its equivalent, for such security is exempt from Section 61-1-7, if all of the following conditions are satisfied:

(1)(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada;

(1)(b) The issuer is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described;

(1)(c) The offerer intends to register the security in this state and conduct its offering pursuant to either SEC Regulation A, Conditional Small Issues Exemption, 17 CFR 230.251 through 17 CFR 230.263 (1995), SEC Rule 504, Exemption for Limited Offerings and Sales of Securities Not Exceeding $1,000,000, 17 CFR 230.504 (1995), or SEC Rule 147, "Part of an Issue," "Person Resident," and "Doing Business Within" for Purposes of Section 3(a)(11), 17 CFR 230.147 (1995), which are incorporated by reference;

(1)(d) Ten (10) business days prior to the initial solicitation of interest under this rule, the offerer files with the Division, Form 14-21s, Solicitation of Interest Form, any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published, and a fee as specified in the Division's fee schedule;

(1)(e) Five (5) business days prior to usage, the offerer files with the Division any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(1)(f) No Solicitation of Interest Form, script, advertisement or other material can be used to solicit indications of interest unless approved by the Division;

(1)(g) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five (5) calendar days from the communication;

(1)(h) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(1)(i) No sale is made until seven (7) calendar days after delivery to the purchaser of a final prospectus or in those instances in which delivery of a preliminary prospectus is allowed, a preliminary prospectus; and

(1)(j) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(1)(j)(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form;

(1)(j)(ii) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(1)(j)(iii) Is currently subject to any federal or state administrative enforcement order or judgment entered by any

state securities administrator or the SEC within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found;

(1)(j)(iv) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(1)(j)(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(2) The prohibitions listed in Subparagraph (C)(1)(j) shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing the party is licensed in this state and the SEC Form BD - Uniform Application for Broker-Dealer Registration, filed with this state discloses the order, conviction, judgment or decree relating to the person. No person disqualified under subparagraph (C)(1)(j) may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by subparagraph (C)(1)(j) is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(3)(a) A failure to comply with any condition of Subparagraph (C)(1) will not result in the loss of the exemption from the requirements of Section 61-1-7 for any offer to a particular individual or entity if the offerer shows:

(3)(a)(i) the failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(3)(a)(ii) the failure to comply was insignificant with respect to the offering as a whole; and

(3)(a)(iii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1).

(3)(b) Where an exemption is established only through reliance on Subparagraph (C)(3)(a), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under Section 61-1-20 and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of Section 61-1-7, but shall be a violation of the Act, be actionable by the Director under Section 61-1-20, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4)(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(4)(a)(i) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(4)(a)(ii) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(4)(a)(iii) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(4)(a)(iv) THIS OFFER IS BEING MADE PURSUANT TO THE REQUIREMENTS OF FEDERAL AND STATE SECURITIES LAWS. NEITHER THE FEDERAL NOR THE STATE AUTHORITIES HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT OR ANY OTHER DOCUMENT PRESENTED TO YOU IN CONNECTION WITH THIS OFFER. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION IF MADE PURSUANT TO REGULATION A, AND IS REGISTERED IN THIS STATE;

(4)(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this rule; and

(4)(c) A preliminary prospectus, or its equivalent, may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.

(5) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(6) Offers made in reliance on this rule will not result in a violation of Section 61-1-7 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(7) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on Subsections 61-1-14(2)(i), 61-1-14(2)(n) or 61-1-14(2)(q) until six (6) months after the last communication with a prospective investor made pursuant to this rule.

R164-14-23s. Foreign Securities - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for secondary market

transactions in securities offered by foreign issuers satisfying the requirements of this rule.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in an outstanding security issued by any corporation organized under the laws of a foreign country with which the United States currently maintains diplomatic relations (or an American Depository Receipt relating to such a security), provided either:

(1)(a) the security appears in the most recent Federal Reserve Board List of Foreign Margin Stocks;

(1)(b) the issuer is currently required to file with the Securities and Exchange Commission information and reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 and is not delinquent in such filing; or

(1)(c) the issuer is not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 and all of the following conditions are met:

(1)(c)(i) the issuer, including any predecessors, has been in continuous operation for at least 5 years and is a going concern actually engaged in business and neither in the organization stage nor in bankruptcy or receivership;

(1)(c)(ii) the number of shares outstanding is at least 2,500,000 and the number of shareholders is at least 5,000;

(1)(c)(iii) the market value of the outstanding shares, other than debt securities and preferred stock, is at least U.S. $100 million;

(1)(c)(iv) the issuer, as of the date of its most recent financial statement, which may not be more than 18 months old and which has been audited in accordance with the generally accepted accounting principles of its country of domicile, has net tangible assets of at least U.S. $100 million;

(1)(c)(v) the issuer had net income after all charges, including taxes and extraordinary losses, and excluding extraordinary gains, of either

(1)(c)(v)(aa) at least U.S. $50 million in total for its last three fiscal years, or

(1)(c)(v)(bb) at least U.S. $20 million in each of its last two fiscal years; and

(1)(c)(vi) if the security is a debt security or preferred stock, the issuer has not during the past 5 years, or during the period of its existence if shorter, defaulted in the payment of any dividend, principal, interest or sinking fund installment thereon.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-24s. Internet Solicitations Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for offers effected through the Internet which do not result in sales in Utah.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Offer" means a communication, regarding the offering of securities within the meaning of Subsection 61-1-13(22)(b), made on the Internet and directed generally to anyone who has access to the Internet, including persons in Utah.

(C) Exemption

(1) The Division finds that registration is not necessary or appropriate for the protection of investors in connection with Internet Offers, provided:

(1)(a) an offer is not specifically directed to any person in Utah;

(1)(b) the Internet Offer indicates that the securities are not being offered to and sales will not be effected with persons in Utah; and

(1)(c) no sales of the issuer's securities are made in Utah as a result of the Internet Offer.

R164-14-25s. Accredited Investor Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for offers and sales to accredited investors. The rule also permits a limited use advertisement.

(B) Definitions

(1) "Accredited Investor" means an accredited investor as defined in 17 CFR 230.501(a) which is incorporated by reference.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Exemption" means the exemption provided in Subsection 61-1-14(2)(s).

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors pursuant to Section 61-1-14(2)(s) in connection with any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule.

(D) Purchaser qualifications

Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors.

(E) Issuer Limitations

The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(F) Investment Intent

The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months

of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Section 61-1-8, 61-1-9, or 6-1-10 or to an accredited investor pursuant to an exemption under Section 61-1-14.

(G) Disqualifications

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (G)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (G).

(H) General Announcement

(1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Division:

(2)(a) The name, address and telephone number of the issuer of the securities;

(2)(b) The name, a brief description and price (if known) of any security to be issued;

(2)(c) A brief description of the business of the issuer in 25 words or less;

(2)(d) The type, number and aggregate amount of securities being offered;

(2)(e) The name, address and telephone number of the person to contact for additional information; and

(2)(f) A statement that:

(2)(f)(i) sales will only be made to accredited investors;

(2)(f)(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(2)(f)(iii) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(I) Additional Information

The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (H), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(J) Telephone Solicitations

No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(K) Effect of dissemination of general announcement to nonaccredited investors

Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(L) Filing Requirements

The issuer shall file with the Division, within 15 days after the first sale in Utah:

(1) one manually signed Form 14-25s, Accredited Investor Exemption Uniform Notice of Transaction Form;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a copy of the general announcement; and

(4) a fee as specified in the Division's fee schedule.

R164-14-26s. Reorganization Exemption for Transactions Involving Certain Federal Covered Securities.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for any transaction involving a reorganization where the securities issued in the transaction are, or will be upon completion of the transaction, covered securities pursuant to section 18(b)(1) of the Securities Act of 1933.

(3) While the Division is preempted by federal law from requiring registration of a covered security, there is no such preemption of licensing requirements for issuer agents which offer or sell covered securities.

(4) By providing this exemption, issuers that participate in a reorganization whose securities are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933, will not be required to license agents which meet the exclusion requirements of Subsection 61-1-13(2).

(5) This exemption is self-executing and requires no filing

with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with any transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets where the securities issued in connection with the transaction are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933.

R164-14-27s. Compensatory Benefit Plan Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption from the registration requirements of Section 61-1-7 for securities issued in compensatory circumstances. The exemption is not available for plans or schemes to circumvent this purpose, such as to raise capital. This exemption also is not available for any transaction that is in technical compliance with this rule but is part of a plan or scheme to evade the registration provisions of Section 61-1-7. In any of these cases, registration under the Act is required unless another exemption is available.

(3) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of Section 61-1-1.

(4) Attempted compliance with the rule does not act as an exclusive election. The issuer can also claim the availability of any other applicable exemption.

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Compensatory Benefit Plan Exemption

(1) Offers and sales made in compliance with SEC Rule 701, Exemption for Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation, 17 CFR 230.701 (1999), which is adopted and incorporated by reference and available from the Division, are determined to be exempt from the registration requirements of Section 61-1-7.

(D) Resale limitations

The resale of securities issued pursuant to this rule must be in compliance with the registration requirements of Section 61-1-7 or an exemption therefrom.

(E) Disqualification

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (E)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (E).

KEY: securities, securities regulation

March 20, 2000	**61-1-7**
Notice of Continuation December 30, 1997	**61-1-8**
	61-1-9
	61-1-10
	61-1-20
	61-1-22
	61-1-24

R164. Commerce, Securities.
R164-26. Consent to Service of Process.
R164-26-6. Consent to Service.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-26 and 61-1-24.

(2) This rule designates the form to be used for consents to service of process.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Form

(1) Except as provided in subparagraph (C)(2), for the purposes of all rules, regulations, orders of the Division, or the Act, the Consent to Service of Process which is to be used, is the NASAA Form U-2 - Uniform Consent to Service of Process.

(2) A Form U-4, Uniform Application for Securities Industry Registration or Transfer, Form ADV, Uniform Application for Investment Adviser Registration, and Form BD, Uniform Application for Broker-Dealer Registration, may be used in lieu of the Form U-2 provided that an originally executed copy of such form is filed with the Division

(D) Agent

All consents to service of process filed with the Division shall appoint the "Director, Utah Division of Securities" as agent for service of process.

(E) Incorporation by reference

For purposes of consents to service of process required to be filed under the Act, a broker-dealer, agent, federal covered adviser, investment adviser, investment adviser representative, or issuer may incorporate by reference in a current application any consent to service of process previously filed with the Division by such person or entity.

KEY: securities regulation
March 4, 1998 61-1-24
Notice of Continuation November 13, 1997 61-1-26(6)

R277. Education, Administration.
R277-473. Testing Procedures.
R277-473-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "CRT (Criterion Reference Test)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

C. "DCS" means the USOE District Computer Services Section.

D. "Last day of school" means the last day classes are held in each school district.

E. "NRT (Norm-reference test)" means a test where the scores are based on comparisons with a nationally representative group of students in the same grade. The meaning of the scores is tied specifically to student performance relative to the performance of the students in the norm group under very specific testing conditions.

F. "Secure test materials" means consumable and nonconsumable test booklets, directions for administering the assessments, kindergarten assessment answer sheets, scoring keys and rubrics.

G. "Standardized tests" means tests required under Utah state law.

H. "USOE" means the Utah State Office of Education.

R277-473-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-603(3) which directs the Board to adopt rules for the conduct and administration of the testing programs and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide specific standards and procedures by which school districts shall handle and administer standardized tests.

R277-473-3. Time Periods for Administering and Returning Materials.

A. School districts shall require that all schools within the school district administer CRTs within a continuous three week period beginning three weeks before the last day of the year or course.

B. School districts shall require that all schools within the school district administer NRTs within the time period specified by the publisher of the test.

C. School districts shall submit all answer sheets for the CRT and NRT tests to DCS for scanning and scoring as follows:

(1) For CRTs, school districts with fewer than 15,000 students shall return answer sheets no later than one week after testing is completed.

(2) For CRTs, school districts with 15,000 or more students shall return answer sheets no later than two weeks after testing is completed.

(3) For NRTs, school districts shall return answer sheets no later than one week after the last day of the testing time period specified by the publisher of the test.

R277-473-4. Security of Testing Materials.

A. The USOE shall maintain a record of all of the secure test materials sent to the school districts.

B. Each school district shall ensure that test materials are secured in an area where only authorized personnel have access.

C. Individual schools within a school district shall secure test materials within three working days of the completion of testing.

D. The USOE may periodically audit school districts to ensure that test materials are properly accounted for and secured.

E. School district employees and school personnel may not copy or in any way reproduce secure test materials without the express permission of the specific test publisher, including the USOE.

R277-473-5. Format for Electronic Submission of Data.

A. DCS shall communicate regularly with school districts regarding required formats for electronic submission of any required data.

B. School districts shall ensure that any computer software for maintaining school district data is, or can be made, compatible with DCS requirements and shall report data as required by the USOE.

R277-473-6. Format for Submission of Answer Sheets and Other Materials.

A. The USOE shall provide a checklist to each school district with clear directions detailing the format in which answer documents are to be collected, reviewed, and returned to the USOE.

B. Each school district shall verify that all the requirements of the testing checklist have been met.

C. CRT data may be submitted in batches in cooperation with the assigned DCS data technician.

R277-473-7. Timing for Return of Results to School Districts.

A. Scanning and scoring shall occur in the order data is received from the school districts.

B. Each school district, in cooperation with the USOE, shall check results and verify their accuracy with DCS.

C. Districts shall not release data until authorized to do so by the USOE.

KEY: educational testing
May 16, 2000 **Art X Sec 3**
53A-1-603(3)
53A-1-401(3)

R277. Education, Administration.
R277-501. Educator Licensing Renewal.
R277-501-1. Definitions.

A. "Acceptable alternative professional development activities" means activities that do not fall within a specific category under R277-501-3 but are consistent with this rule.

B. "Active educator" means an individual holding a valid license issued by the Board who is employed by a unit of the public education system or an accredited private school in a role covered by the license or an individual who has taught successfully for three of the five years in the educator's renewal cycle.

C. "Active license" means a license that is currently valid for service in a position requiring a license.

D. "Approved Inservice" means training, approved by the USOE under R277-519-3, in which current educators or individuals who have previously received a license may participate to renew a license, teach in another subject area or teach at another grade level.

E. "Board" means the Utah State Board of Education.

F. "College/university course" means a course taken through an institution approved under Section 53A-6-108.

G. "Documentation of professional development activities" means:

(1) an original report card or student transcript for university/college courses;

(2) certificate of completion for an approved inservice, conference, workshop, institute, symposium, educational travel experience and staff development;

(3) summary, explanation, or copy of the product and supervisor's signature, if available, or complete documentation of professional development activities that support district and school policies and further academic pursuit or educational innovations of professional development activities. All agendas, work products, certificates shall be maintained by the educator in the educator's Utah Educator License Renewal Folder;

(4) an agenda or conference program demonstrating sessions and duration of professional development activities.

H. "Educational research" means conducting educational research or investigating education innovations.

I. "Inactive educator" means an individual holding a valid license issued by the Board who was employed by a unit of the public education system or an accredited private school in a role covered by the license for less than three years in the individual's renewal period.

J. "Inactive license" means a license, other than a surrendered, suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

K. "Level 1 license" means a license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

L. "Level 2 license" means a license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule; and

(2) three years of successful education experience within a five-year period.

M. "Level 3 license" means a license issued to an educator who holds a current Utah Level 2 license and has also received National Board certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school.

N. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

O. "One half time contract position" means less than full time (minimum hours defined by district contract) but at least one half time (minimum hours defined by district contract) employment as an educator in a unit of the public education system or an accredited private school for one school year, or full time for at least one half of the school year.

P. "Professional activities in an educational institution" means active participation in an educational institution consistent with the standards of this rule.

Q. "Professional development plan" means a document prepared by the educator consistent with this rule.

R. "Professional development or license points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

S. "Utah Educator License Renewal Folder" means the folder provided by the USOE or school districts for educators to collect and track professional activities for purposes of license renewal. The license renewal folder may also be developed by an educator upon his own initiative and in an individual format, but shall include adequate documentation of participation in activities approved under this rule.

T. "USOE" means the Utah State Office of Education.

U. "Verification of employment" means official documentation of employment as an educator.

R277-501-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional development plan and documentation of activities consistent with Section Title 53A, Chapter 6.

R277-501-3. Categories of Acceptable Activities for a Licensed Educator.

A. A college/university course:

(1) shall be successfully completed with a "C" or better, or a "pass."

(2) Each semester hour equals 18 license points; or

(3) Each quarter hour equals 12 license points.

B. Inservice:

(1) shall be state-approved under R277-519-3.

(2) may be requested from the USOE by:

(a) written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist at least two weeks prior to the beginning date of the scheduled inservice, or

(b) a request submitted through the computerized inservice program connected to the USOE licensure system.

(i) The computerized process is available in most Utah school districts and area technology centers.

(ii) Such requests shall be made at least two weeks prior to the beginning of the scheduled inservice.

(3) Each clock hour of authorized inservice time equals one professional development point.

(4) The inservice shall be successfully completed through attendance and required project(s).

C. Conferences, workshops, institutes, symposia, educational travel experience or staff-development programs:

(1) Acceptable workshops and programs include those with prior written approval by the USOE, recognized professional associations, district supervisors, or school supervisors regardless of the source of sponsorship or funding.

(2) One license point is awarded for each clock hour of educational participation.

D. Service in professional activities in an educational institution:

(1) Acceptable service includes that in which the license holder contributes to improving achievement in a school, district, or other educational institution, including planning and implementation of an improvement plan.

(2) One license point is awarded for each clock hour of participation.

(3) An inactive educator may earn professional development points by service in professional activities under the supervision of an active administrator.

E. Service in a leadership role in a national, state-wide or district recognized professional education organization:

(1) Acceptable service includes that in which the license holder assumes a leadership role in a professional education organization.

(2) One license point is awarded for each clock hour of participation with a maximum of 10 license points per year.

F. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities include conducting educational research or investigating educational innovations.

(2) This research activity shall follow school and district policy.

(3) An inactive educator may conduct research and receive professional development credit on programs or issues approved by a practicing administrator.

(4) One license point is awarded for each clock hour of participation.

G. Acceptable alternative professional development activities:

(1) Acceptable activities are those that enhance or improve education yet may not fall into a specific category.

(2) These activities shall be approved by an educators's principal/supervisor.

(3) One license point is awarded for each clock hour of participation.

H. Substituting in a unit of the public education system or an accredited private school may be an acceptable alternative professional development activity toward license renewal if the license holder is not an active educator as defined under R277-501B and is paid and authorized as a substitute. A substitute shall earn one point for every two hours of documented substitute time. Verification of hours shall be obtained from the employer or from the supervising principal. A license holder may earn a maximum of 50 professional development points during the renewal period as a substitute.

I. Up to 50 license points may be earned in any one or any combination of categories D, F and G above.

R277-501-4. Required Renewal License Points for Designated License Holders.

A. Level 1 license holder with no licensed educator experience.

(1) An educator desiring to retain active status shall earn at least 100 license points in each three year period.

B. Level 1 license holder with one year licensed educator experience within a three year period.

(1) An active educator shall earn at least 75 license points in each three year period; and

(2) any years taught shall have satisfactory evaluation(s).

C. Level 1 license holder with two years licensed educator experience within a three year period.

(1) An active educator shall earn at least 50 license points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

D. Level 2 license holder:

(1) An active educator shall earn at least 100 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.

(2) An inactive educator shall earn at least 200 license points within a five year period to maintain an active educator license.

(3) An inactive educator who works one year within a five year period shall earn 165 license points within a five year period to maintain an active educator license.

(4) An inactive educator who works two years within a five year period shall earn 130 license points within a five year period to maintain an active educator license.

(5) Credit for any year(s) taught requires satisfactory evaluation(s).

E. Level 3 license holder:

(1) A Level 3 license holder with National Board Certification shall meet the National Board for Professional Teaching Standards (NBPTS) requirements consistent with the NBPTS schedule available from the USOE Educator Licensure Section. A Level 3 license holder shall be responsible to provide verification of NBPTS status prior to the license holder's designated renewal date.

(2) A Level 3 license holder with a doctorate degree in education or in a field related to a content area in a unit of the public education system or an accredited private school shall meet the active or inactive educator Level 2 license holder requirements within a seven year period.

(3) An educator seeking a Level 3 license shall notify the

USOE of completion of Level 3 license requirements. Level 3 license criteria apply to the license holder as of the license holder's renewal date following the notification to the USOE.

R277-501-5. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.

A. Level 2 active educators:

(1) A licensed educator whose license expires June 30, 2001 shall earn 20 license points between July 1, 1999 and June 30, 2001 and shall provide verification of employment.

(2) A licensed educator whose license expires June 30, 2002 shall earn 40 license points between July 1, 1999 and June 30, 2002 and shall provide verification of employment.

(3) A licensed educator whose license expires June 30, 2003 shall earn 60 license points between July 1, 1999 and June 30, 2003 and shall provide verification of employment.

(4) A licensed educator whose license expires June 30, 2004 shall earn 80 license points between July 1, 1999 and June 30, 2004 and shall provide verification of employment.

(5) A licensed educator whose license expires June 30, 2005 shall earn 100 license points between July 1, 1999 and June 30, 2005 and shall provide verification of employment.

B. Level 2 inactive educators:

(1) A licensed educator whose license expires on June 30, 2001 shall earn 100 license points between July 1, 1999 and June 30, 2001. License holders may receive credit for university/inservice courses taken no more than five years prior to July 1, 1999 under R277-501-6(I).

(2) A licensed educator whose license expires on June 30, 2002 shall earn 100 license points between July 1, 1999 and June 30, 2002. License holders may receive credit for university/inservice courses taken no more than five years prior to July 1, 1999 under R277-501-6(I).

(3) A licensed educator whose license expires on June 30, 2003 shall earn 120 license points between July 1, 1999 and June 30, 2003.

(4) A licensed educator whose license expires on June 30, 2004 shall earn 160 license points between July 1, 1999 and June 30, 2004.

(5) A licensed educator whose license expires on June 30, 2005 shall earn 200 license points between July 1, 1999 and June 30, 2005.

R277-501-6. Miscellaneous Renewal Information.

A. A licensed educator shall develop and maintain a professional development plan. The plan:

(1) shall be based on the educator's professional goals and current or anticipated assignment,

(2) shall take into account the goals and priorities of the school/district,

(3) shall be consistent with state laws and district policies, and

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor.

(6) If an educator is not employed in education at the renewal date, the educator shall:

(a) review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form, or

(b) review the professional development plan and personally sign the verification form.

B. Each Utah license holder shall be responsible for maintaining a professional development folder.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development folder shall be retained by the educator for a minimum of two renewal cycles.

C. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, Salt Lake City, Utah 84111 between January 1 and June 30 of the renewal year.

(1) Forms that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may review or audit verification for license renewal forms or education license renewal folders upon request.

D. License holders may begin to acquire professional development points under this rule as of July 1, 1999.

E. This rule does not explain criteria or provide credit standards for state approved inservice programs. That information is provided in R277-519.

F. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development credit should not be assumed to be credit for school district purposes, such as salary or lane change credit.

G. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status. Educators with active licenses shall not be charged a renewal fee.

H. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

(3) Approval or disapproval shall be made in a timely manner.

I. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.

(1) Specialists shall be considered licensed as of September 15, 1999, the effective date of R277-521.

(2) All specialists shall be considered Level 1 license holders.

(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.

KEY: educational program evaluations, educator license renewal*

May 16, 2000 **Art X Sec 3**

53A-6-104

53A-1-401(3)

R277. Education, Administration.

R277-702. Procedures for the Utah General Educational Development Certificate.

R277-702-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "GED Test" means the General Educational Development Test developed by the American Council on Education.

C. "Utah General Educational Development Certificate" means a certificate issued by the Board acknowledging competency on the part of the certificate holder in the GED test areas.

R277-702-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding access to programs, competency levels and graduation requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to describe the standards and procedures for obtaining a Utah General Educational Development Certificate.

R277-702-3. Eligibility for GED Testing.

A. Admission to a GED Test requires the following:

(1) that the applicant be at least 18 years of age and the applicant's graduating class has graduated; or

(2) that if the applicant is 17 or 18 years of age and the applicant's graduating class has not graduated, the GED testing center requires the following:

(a) a letter from the school district within which the applicant resides indicating the applicant is not regularly enrolled in school; and

(b) a letter from the applicant's parent or guardian authorizing the test or a marriage certificate from the applicant if the applicant is married.

R277-702-4. Administrative Procedures and Standards for Testing and Certification.

A. The Board contracts with the General Educational Testing Service of the American Council on Education to administer the GED testing program in the state. The Board may contract with educational institutions within the state to administer the tests and provide related testing services. The number and location of the institutions designated as testing centers is determined in a manner that ensures that the test is reasonably accessible to potential applicants. Testing centers shall meet the GED Testing Service requirements in the GED Examiner's Manual.

B. Persons desiring to take a GED Test shall complete an application available from any official GED testing center of the Board and be eligible to take the GED Test under Subsection 3.

C. Persons desiring to obtain a Utah General Educational Development Certificate shall obtain a standard score of at least 40 on each of the five test components of the GED Test and obtain an overall average standard score of 45 on the five tests combined.

R277-702-5. Fee.

A. The Board, or its designee, shall adopt uniform fees for the General Educational Development Certificate and uniform forms, deadlines, and accounting procedures to administer this program.

B. A GED testing center, after consultation with the Board or its designee, shall adopt fees and forms for its GED testing.

R277-702-6. Official Transcripts.

Test scores shall be accepted by the Board when original scores are reported by:

A. Board-approved GED testing centers;

B. Transcript service of the Defense Activity for Non-Traditional Educational Support (DANTES);

C. Veterans Administration hospitals and centers; or

D. GED Testing Service.

R277-702-7. Adult High School Credit.

A local board of education may adopt standards and procedures for awarding up to five (5) units of credit on the basis of test results which may be applied toward an adult high school diploma only.

KEY: adult education, educational testing, student competency

May 16, 2000 53A-1-402(1)(b)

Notice of Continuation January 14, 1998 53A-1-401(3)

R309. Environmental Quality, Drinking Water.
R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.
R309-705-1. Purpose.

The purpose of this rule is to establish criteria for financial assistance to public drinking water system in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act.

R309-705-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue financial assistance for drinking water projects from a federal capitalization grant is provided in 42 U.S.C. 300j et seq., federal Safe Drinking Water Act, and Title 73, Chapters 10b and 10c, Utah Code Unannotated.

R309-705-3. Definitions.

Definitions for general terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property condemnation cost, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments and interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications, as defined by 73-10b-2(6) of the Utah Code Unannotated.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, or interest buy-down agreement.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-350 for hardship grants.

"Negative Interest" means a loan with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule, and by the Drinking Water Board.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal

R309-705-4. Financial Assistance Methods.

(1) Eligible Activities of the SRF.

Funds within the SRF may be used for loans and other authorized forms of financial assistance. Funds may be used for the construction of publicly or privately owned works or facilities, or any work that is an eligible project cost as defined by 73-10b-2 of the Utah Code Unannotated.

(2) Types of Financial Assistance Available for Eligible Water Systems.

(a) Loans.

To qualify for "negative interest" or "principal forgiveness", the system must qualify as a "disadvantaged community". Upon application, the Board will make a case by case determination whether the system is a "disadvantaged community". To be eligible to be considered as a disadvantaged community, the system must be located in a service area or zip code area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns. Additionally, the Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and other such information as the Board determines relevant to making the decision to recognize the system as a "disadvantaged community".

(i) Hardship Grant Assessment.

The assessment will be calculated based on the procedures

and formulas shown in section 6 of this rule.

(ii) Repayment.

Annual repayments of principal, interest and/or Hardship Grant Assessment generally commence not later than one year after project completion. Project completion shall be defined as the date the funded project is capable of operation. Where a project has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments.

The loan must be fully amortized not later than 20 years after project completion. The yearly amount of the principal repayment is set at the discretion of the Board.

(iii) Principal Forgiveness.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of forgiveness of the principal loan amount. Terms for principal forgiveness will be as determined by Board resolution.

Eligible applicants for "principal forgiveness" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(iv) Negative Interest Rate.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of a loan with a negative interest rate, as determined by Board resolution.

Eligible applicants for "negative interest" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(v) Dedicated Repayment Source and Security.

Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan. As a condition of financial assistance, the applicant must demonstrate a revenue source and security, as required by the Board.

(b) Refinancing Existing Debt Obligations.

The Board may use funds from the SRF to buy or refinance municipal, inter-municipal or interstate agencies, where the initial debt was incurred and construction started after July 1, 1993. Refinanced projects must comply with the requirements imposed by the Safe Drinking Water Act(SDWA) as though they were projects receiving initial financing from the SRF.

(c) Credit Enhancement Agreements and Interest Buy-Down Agreements.

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement. To provide security for project obligations, the Board may agree to purchase project obligations of applicants, or make loans to the applicants. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. The Board may also consider other methods of assistance to applicants to properly enhance the marketability of or security for project obligations.

Interest buy-down agreements may consist of any of the following:

(i) A financing agreement between the Board and applicant whereby a specified sum is loaned to the applicant. The loaned funds shall be placed in a trust account, which shall be used exclusively to reduce the cost of financing for the project.

(ii) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(iii) Any other legal method of financing which reduces the annual payment amount on publicly issued bonds. The financing alternative chosen should be the one most economically advantageous for the State and the applicant.

(3) Ineligible Projects.

Projects which are ineligible for financial assistance include:

(a) Any project for a water system in significant non-compliance, as measured by a "not approved" rating, unless the project will resolve all outstanding issues causing the non-compliance.

(b) Any project where the Board determines that the applicant lacks the technical, managerial, or financial capability to achieve or maintain SDWA compliance, unless the Board determines that the financial assistance will allow or cause the system to maintain long-term capability to stay in compliance.

(c) Any project meant to finance the expansion of a drinking water system to supply or attract future population growth. Eligible projects, however, can be designed and funded at a level which will serve the population that a system expects to serve over the useful life of the facility.

(d) Projects which are specifically prohibited from eligibility by Federal guidelines. These include the following:

(i) Dams, or rehabilitation of dams;

(ii) Water rights, unless the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;

(iii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;

(iv) Laboratory fees for monitoring;

(v) Operation and maintenance costs;

(vi) Projects needed mainly for fire protection.

(e) Second home subdivisions, meaning those subdivisions having a majority of non-primary living residents.

R309-705-5. Application and Project Initiation Procedures.

The following procedures must normally be followed to

obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel, as deemed acceptable by the Drinking Water Board, to prepare an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report, as appropriate, are submitted to the Board.

(3) The staff prepares an engineering, capacity development analysis, and financial feasibility report on the project for presentation to the Board.

(4) The Board "Authorizes" financial assistance for the project on the basis of the feasibility report prepared by the staff. The Board then designates whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approves the project schedule (see section 7 of this rule).

(5) The applicant must demonstrate public support for the project prior to bonding, as deemed acceptable by the Drinking Water Board.

(6) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant (see section 8 of this rule). The opinion must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to 11-14-21 of the Utah Code Unannotated. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

(7) The Board issues a Plan Approval for plans and specifications, if required, and concurs in bid advertisement.

(8) If a project is designated to be financed by a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement, all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

(9) For a revenue bond, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. For a general obligation bond, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(10) A "Private Company" will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or additional/other security interests to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements wil be established after the Board's staff has reviewed and analysed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board

(d) The Applicant will also be required to excute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs. Or it may authorize another acceptable disbursement procedure.

(11) The applicant's contract with its engineer must be submitted to the Board for review to, determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(12) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and quantity of water rights, and adequacy of bidding and contract documents, as required.

(13) A position fidelity bond must be provided for the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system.

(14) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall issue the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds on the open market and the Board of the terms of sale. If a credit enhancement agreement is being utilized, the bonds sold on the open market shall contain the legend required by 73-10c-6(3)(d) of the Utah Code Unannotated. If an interest buy-down agreement is being utilized, the bonds sold on the open market shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(16) The applicant shall open bids for the project.

(17) LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

(18) LOAN ONLY - The final closing of the loan is conducted.

(19) A preconstruction conference shall be held.

(20) The applicant shall issue a written notice to proceed to the contractor.

R309-705-6. Applicant Priority System and Selection of Terms of Assistance.

(1) Priority Determination.

The Board may, at its option, modify a project's priority rating based on the following considerations:

(a) The project plans, specifications, contract, financing, etc., of a lesser-rated project are ready for execution.

(b) Available funding.

(c) Acute health risk.

(d) Capacity Development.

The Board will utilize the format shown in Table 1 to prioritize loan applicants.

TABLE 1
Priority System

Deficiency Description	Points Received
Source Quality/Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or- System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
Total	100

Treatment

Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements and/or turbidity standards.	25
B. The required disinfection systems are not installed, are inadequate, or fail to provide adequate water quality.	25
C. Treatment system is subject to impending failure, or has failed.	25
-or- Treatment system equipment does not meet demands of UPDWR.	15
-or- System equipment is projected to become inadequate without upgrades.	5
Total	75

Storage

Deficiency Description	Points Available
Health Risk / Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure, or has failed.	25
-or- System is old, cannot be easily cleaned, or subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
-or- Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
Total	75

Distribution

Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or- Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
Total	75

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)

Where:
* Rate Factor = (Average System Water Bill/Average State Water Bill)
** AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBBI)as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBBI rate down to a potential minimum of zero percent.

TABLE 2
Special Hardship Grant Assessment Rate Reduction Incentives

1. Project will include creation or enhancement of, or compliance with a regionalization plan	25
2. Applicant has, within the last 5 years, developed and implemented a water master plan	25
3. Applicant has a 5-year history of having implemented a replacement or depreciation fund, amounting to 5% of the drinking water budget for O and M, and debt service.	15
4. Applicant has a written emergency response plan.	10
5. Project funding contributed by applicant meets or exceeds 20% of estimated project cost	10
6. Applicant has established a rate structure to encourage water conservation	15
TOTAL POSSIBLE POINTS	100

R309-705-7. Project Authorization.

A project may be "Authorized" for a loan, credit enhancement agreement, or interest buy-down agreement in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment and Staff feasibility report.

Once the application submittals are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include an evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, or interest buy-down agreement).

The Board may authorize a loan for any work or facility to provide water for human consumption and other domestic uses. Generally, work means planning, engineering design, or other eligible activities defined elsewhere in these rules.

Project Authorization is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, or interest buy-down and upon adherence to the project schedule approved at that time. The Board, at its own discretion, may require the Applicant to enter into a "Commitment Agreement" with the Board prior to execution of final loan documents or closing of the loan. This Commitment Agreement or Binding Commitment may specify date(s) by which the Applicant must complete the requirements set forth in the Project Authorization Letter. The Commitment Agreement shall state that if the Department of Environmental Quality acting through the Drinking Water Board is unable to make the Loan by the Loan Date, this Agreement shall terminate without any liability accuring to the Department or the Applicant hereunder. Also, if the project does not proceed according to the project schedule, the Board may withdraw project Authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R309-705-8. Financial Evaluations.

(1) The Board considers it a proper function to assist project applicants in obtaining funding from such financing sources as may be available.

(2) In providing financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel. Bond counsel must provide an opinion that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of $150,000 or less the Board will not require this opinion.

(3) In providing financial assistance in the form of a loan, the Board may purchase either taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt. Tax-exempt bonds must be accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Interest and the Hardship Grant Assessment (also interest) on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(a) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(b) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(4) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(5) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or Hardship Grant Assessment) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(6) If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(7) Normal engineering and investigation costs incurred by the Department of Environmental Quality (DEQ) or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization.

If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the Board Suthorizes a loan for the project, all costs incurred by the DEQ or Board on the project will be charged against the project and paid by the applicant as a part of the total project cost. Generally, this will include all DEQ and Board costs incurred from the beginning of the preliminary investigations through the end of construction and close-out of the project. If the applicant decides not to build the project after the Board has Authorized the project, all costs accrued after the Authorization date will be reimbursed by the applicant to the Board.

(8) The Board shall determine the date on which the scheduled payments of principal, Hardship Grant Assessment, and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system user up to one year of actual use of the project facilities before the first repayment is required.

(9) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(10) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(11) The Board will not forgive the applicant of any payment after the payment is due.

(12) The Board will require that a debt service reserve account be established by the applicant at or before the time that the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be

continued until the bond is retired. Failure to maintain the reserve account will constitute a technical default on the bond(s).

(13) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or Hardship Grant Assessment on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed.

(14) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% (or such other amount as the Board may determine) of the total annual debt service.

(15) A Water Management and Conservation Plan will be required.

R309-705-9. Committal of Funds and Approval of Agreements.

After the Board has approved the plans and specifications by the issuance of a Plan Approval, the loan will be considered by the Board for final approval. The Board will determine whether the agreement is in proper order. The Executive Secretary, or designee, may then execute final approval of the loan or credit enhancement agreement if obligations to the Board or other aspects of the project have not changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, or interest buy-down agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

R309-705-10. Construction.

The Division of Drinking Water staff may conduct inspections and will report to the applicant. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of $10,000 must receive prior written approval by the Executive Secretary before execution. Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Executive Secretary to conduct a final inspection. When the project is complete to the satisfaction of the applicant's engineer, the Executive Secretary and the applicant, written approval will be issued by the Executive Secretary to commence using the project facilities.

R309-705-11. Compliance with Federal Requirements.

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system(s) that the project will serve.

(2) As required by Federal Code, applicants may be subject to the following federal requirements:

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended

Clean Air Act, Pub. L. 84-159, as amended

Coastal Barrier Resources Act, Pub. L. 97-348

Coastal Zone Management Act, Pub. L. 92-583, as amended

Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898

Floodplain Management, Executive Order 11988 as amended by Executive Order 12148

Protection of Wetlands, Executive Order 11990

Farmland Protection Policy Act, Pub. L. 97-98

Fish and Wildlife Coordination Act, Pub. L. 85-624

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190

National Historic Preservation Act of 1966, PL 89-665, as amended

Safe Drinking Water Act, Pub. L. 93-523, as amended

Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Age Discrimination Act of 1975, Pub. L. 94-135

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)

The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)

Equal Employment Opportunity, Executive Order 11246

Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

Anti-Lobbying Provisions (40 CFR Part 30)

Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended

Procurement Prohibitions under Section 306 of the Clean Water Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Debarment and Suspension, Executive Order 12549

Accounting procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements

KEY: SDWA, financial assistance, loans

May 16, 2000 **19-4-104**
73-10b
73-10c

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under R315-3 through R315-9 and R315-13 of these rules and which are subject to the notification requirements of these rules.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Chapter 6, Title 19. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) This rule identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Board has reason to believe that the material may be a solid waste within the meaning of subsection 19-6-102(13) and a hazardous waste within the meaning of subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

R315-2-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by subsection R315-2-4(a) or that is not excluded by variance granted under R315-2-18 and R315-2-19.

(2) A discarded material is any material which is:

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or

(iii) Considered inherently waste-like, as explained in paragraph (d) of this section.

(b) Materials are solid waste if they are abandoned by being;

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (c)(4) of this section. Table 1 of 40 CFR 261.2, 1997 ed., is adopted and incorporated by reference and shall be effective through June 30, 1999. Table 1 of 40 CFR 261.2, 1998 ed., is adopted and incorporated by reference, except that the heading for Column 3 shall read "reclamation (Section 261.2(c)(3)) (except as provided in 261.4(a)(16) for mineral processing secondary materials), and shall be effective July 1, 1999.

(1) Used in a manner constituting disposal

(i) Materials noted with "*" in Column 1 of Table 1 of 40 CFR 261.2, are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land, in which cases the product itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in Column 2 of Table 1 of 40 CFR 261.2 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "*" in Column 3 of Table 1 of 40 CFR 261.2 are solid wastes when reclaimed, except as provided under R315-2-4(a)(16), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed, except as provided under R315-2-4(a)(16), which shall be effective on July 1, 1999.

(4) Accumulated speculatively. Materials noted with a "*" in Column 4 of Table 1 of 40 CFR 261.2 are solid wastes when accumulated speculatively.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021, unless used as an ingredient to make a product at the site of generation, F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in R315-2-9 through R315-2-10 and R315-2-24, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in 40 CFR 261 Appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Board will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in R315-50-10 and these constituents are not ordinarily found in raw materials or products for which the materials substitute, or are found in raw materials or products in smaller concentrations, and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process

to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. After June 30, 1999, in cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at R315-2-4(a)(16) apply rather than this provision.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, described in paragraphs (e)(1)(i)-(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing the Utah Solid and Hazardous Waste Act who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

R315-2-3. Definition of Hazardous Waste.

(a) A solid waste as defined in section R315-2-2 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under subsection R315-2-4(b); and

(2) It meets any of the following criteria:

(i) It is listed in sections R315-2-10 or R315-2-11 and has not been excluded from this section under sections R315-2-16 or R315-2-17.

(ii) It exhibits any of the characteristics of hazardous waste identified in R315-2-9. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under R315-2-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under R315-2-9 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I, 40 CFR 261.24, which R315-2-9(g)(2) incorporates by reference, that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(iii) It is a mixture of solid waste and a hazardous waste that is listed in sections R315-2-10 or R315-2-11 solely because it exhibits one or more of the characteristics of hazardous waste identified in section R315-2-9, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in section R315-2-9 or unless the solid waste is excluded from regulation under R315-2-4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in section R315-2-9 for which the hazardous waste listed in R315-2-10 or R315-2-11 was listed. However, nonwastewater mixtures are still subject to the requirements of R315-13, which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in sections R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under sections R315-2-16 and R315-2-17; however, the following mixtures of solid wastes and hazardous wastes listed in sections R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and:

(A) One or more of the following spent solvents - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million;

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million;

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous

Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided it is demonstrated that the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(iii) and (v). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns,

flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Executive Secretary for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Executive Secretary on an annual basis if such changes occur. Such notification and certification should be sent to the Executive Secretary by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste N0. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Board, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when

disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Secondary materials, i.e., sludges, by-products, and spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10 and 11, which incorporates by reference 40 CFR 261 Subpart D, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing, provided that:

(i) The secondary material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The secondary material is not accumulated speculatively;

(iii) Except as provided in (iv), the secondary material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Executive Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing secondary materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing secondary materials do not contain any free liquid. The Executive Secretary must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing secondary material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides a notice to the Executive Secretary, identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(b)(7), mineral processing secondary materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(17) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing

facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from ortanic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching

(except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials remains excluded under paragraph (b) of this section if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing, February 11, 1999;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation

under R317-8 of the Utah Water Quality Rules.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge, There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

(i) The sample is being transported to a laboratory for the purpose of testing;

(ii) The sample is being transported back to the sample collector after testing;

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing;

(iv) The sample is being stored in a laboratory before testing;

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, and R315-4 through R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-10, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(1) the name, mailing address, and telephone number of

the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-1.3(f) (40 CFR 261.4(f)) or has an appropriate RCRA plan approval or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

(B) a copy of the contract with the facility conducting the treatability study;

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

(2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Executive Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Executive Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Executive Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Executive Secretary considers necessary.

(f) SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Executive Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received"

hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Executive Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Executive Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

R315-2-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

The requirements of 40 CFR 261.5, 1996 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, 1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference within this rule, except for the following changes:

(a) Paragraph 40 CFR 261.6(a)(5) shall be amended to read as follows:

Hazardous waste as identified in 40 CFR 262.80(a) that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in Section 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

R315-2-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either

(i) an empty container, or

(ii) an empty inner liner removed from a container, as defined in paragraph (b) of this section, is not subject to regulation under R315-2 through R315-13.

(2) Any hazardous waste in either:

(i) a container that is not empty, or

(ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R315-2 through R315-13.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters, one inch, of residue remains on the bottom of the container or inner liner; or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container

that has held an acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

R315-2-8. PCB Wastes Regulated under the Toxic Substance Control Act, 42 U.S.C. et seq.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under part 761 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic, hazardous codes D018 through D043 only, are exempt from regulation under R315-2 through R315-50 and the notification requirements of section 3010 of RCRA.

R315-2-9. Characteristics of Hazardous Waste.

(a) GENERAL.

(1) A solid waste, as defined in section R315-2-2, which is not excluded from regulation as a hazardous waste under R315-2-4(b), is a hazardous waste if it exhibits any of the characteristics identified in this section.

(2) A hazardous waste which is identified by a characteristic in this section, is assigned every EPA Hazardous Waste Number that is applicable as set forth in this section. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under R315-3 through R315-8, and R315-13.

(3) For purposes of this section, the Executive Secretary will consider a sample obtained using any of the applicable sampling methods specified in R315-50-6, or an equivalent method, to be a representative sample.

(b) CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE.

(1) The Board shall identify and define a characteristic of hazardous waste in this section only upon determining that:

(i) A solid waste that exhibits the characteristic may:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(ii) The characteristic can be:

(A) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(B) Reasonably detected by generators of solid waste through their knowledge of their waste.

(c) CRITERIA FOR LISTING HAZARDOUS WASTE.

(1) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in this section.

(ii) It has been found to be fatal to humans in low doses, or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 50 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness. Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.

(iii) It contains any of the toxic constituents listed in R315-50-10 and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(A) The nature of the toxicity presented by the constituent.

(B) The concentration of the constituent in the waste.

(C) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (c)(1)(iii)(G) of this section.

(D) The persistence of the constituent or any toxic degradation product of the constituent.

(E) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(F) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(G) The plausible types of improper management to which the waste could be subjected.

(H) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(I) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(J) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(K) Other factors as may be appropriate.

Substances will be listed on R315-50-10 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria will be designated Toxic wastes.

(2) The Board may list classes or types of solid waste as hazardous waste if they have reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102 of the Utah Solid and Hazardous Waste Act.

(3) The Board will use the criteria for listing specified in this section to establish the exclusion limits referred to in 40 CFR 261.5(c). R315-2-5 incorporates by reference the

requirements of 40 CFR 261.5 concerning conditionally exempt small quantity generators.

(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, or as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(iii) It is an ignitable "compressed gas" as defined in 49 CFR 173.300(a), 1990 ed., which is adopted and incorporated by reference, and as determined by the test methods described in that regulation or equivalent test methods approved under section R315-2-15.

(iv) It is an "oxidizer" as defined in 49 CFR 173.151, 1990 ed., which is adopted and incorporated by reference.

(2) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

(e) CHARACTERISTIC OF CORROSIVITY

(1) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(i) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(ii) It is a liquid and corrodes steel, SAE 1020, at a rate greater than 6.35 mm, 0.250 inch, per year at a test temperature of 55 degrees C, 130 degrees F, as determined by the test method specified in NACE, National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(2) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

(f) CHARACTERISTIC OF REACTIVITY

(1) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating.

(ii) It reacts violently with water.

(iii) It forms potentially explosive mixtures with water.

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(viii) It is a "forbidden explosive" as defined in 49 CFR 173.5 ed., or a "Class 1 explosive" as defined in 49 CFR 173.50(b)(1), (2), or (3), which are incorporated by reference.

(2) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

(g) TOXICITY CHARACTERISTIC

(1) A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 CFR 261.24 at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this paragraph.

(2) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 of 40 CFR 261.24, which corresponds to the toxic contaminant causing it to be hazardous. Table 1 of 40 CFR 261.24, 1990 ed., is adopted and incorporated by reference.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)

Corrosive Waste: (C)

Reactive Waste: (R)

Toxicity Characteristic Waste: (E)

Acute Hazardous Waste: (H)

Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, 1998 ed., as amended by 63 FR 42110, August 6, 1998, is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 1998 ed., as amended by 63 FR 42110, August 6, 1998, is adopted and incorporated by reference, excluding the following wastes:

(1) K064 -- Acid Plant blowdown slurry or sludge resulting from the thickening of blowdown slurry from primary copper production. (T)

(2) K065 -- Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities. (T)

(3) K066 -- Sludge from treatment of process wastewater or acid plant blowdown or both from primary zinc production. (T)

(4) K090 -- Emission control dust or sludge from ferrochromium silicon production. (T)

(5) K091 -- Emission control dust or sludge from ferrochromium production. (T)

(6) K160 -- Solids from the production of thiocarbamates and solids from the treatment of wastes from thiocarbamates.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 1998 ed., is adopted and incorporated by reference.

R315-2-12. Inspections.

Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which hazardous wastes are generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to these wastes for the purpose of ascertaining the compliance with R315-1 through R315-101. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

R315-2-13. Variances Authorized.

(a) Variances will be granted by the Board only to the extent allowed under Federal law.

(b) The Board may consider a variance request in accordance with the statutory standard of 19-6-111. No variance shall be granted except upon application for it. Immediately upon receipt of an application for a variance, the Board shall give public notice of the application and provide for an opportunity for a public hearing. A variance granted for more than one year shall contain a timetable for coming into compliance with these regulations and shall be conditioned on adherence to that timetable.

(c) Any variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate for the initial granting of a variance. No renewal shall be granted except on application for it. Immediately upon receipt of an application for renewal, the Board shall give public notice of the application and provide for an opportunity for a public hearing.

(d) The Board may, at its own instance, review any variance granted during the term for which a variance was granted. The procedure for this review shall be the same as that for an original application and the variance previously granted may be revoked upon a finding that the conditions and the terms upon which the variance was granted are not being met.

(e) Any variance or renewal shall exist at the discretion of the Board and shall not constitute a right of the applicant or holder. However, any person adversely affected by the granting, denial or revocation of any variance or renewal by the Board may obtain judicial review of the Board's decision by filing a petition in District Court within 30 days from the date of notification of the decision.

R315-2-14. Violations, Orders, and Hearings.

(a) Whenever the Board or its duly appointed representative, as expressly delegated by the Board, determines that any person is in violation of any applicable approved hazardous waste operation plan or the requirements of R315-1 through R315-101, the Board or its duly appointed representative may cause written notice of that violation to be served upon the alleged violators. That notice shall specify the provisions of the plan, the rules alleged to have been violated, and the facts alleged to constitute the violation. The Board or its duly appointed representative may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of R315-1 through R315-101.

(b) Any order issued pursuant to 19-6-112 and R315-2-14(a) shall become final unless, within 30 days after the order is served, the persons specified therein request a hearing. The request shall:

(1) be in writing;

(2) be addressed to the Executive Secretary;

(3) include the order number;

(4) state the facts;

(5) state the relief sought; and

(6) state the reasons the relief requested should be granted.

(c) Utah Administrative Procedures Act, 63-46b, and R315-12, shall govern the conduct of hearings before the Board.

R315-2-15. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical method to R315-2, R315-7, R315-8, or R315-50, which incorporates the testing and analytical methods of 40 CFR 261, may petition for a regulatory amendment under this section and R315-2-17. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in R315-2, R315-7, R315-8, or R315-50, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) A description of the proposed action, including, where appropriate, suggested regulatory language;

(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information;

(5) A full description of the proposed method, including all procedural steps and equipment used in the method;

(6) A description of the types of wastes or waste matrices for which the proposed method may be used;

(7) Comparative results obtained from using the proposed method with those obtained from using the relevant or

corresponding methods prescribed in R315-2, R315-7, R315-8, and R315-50;

(8) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(9) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which it may reasonably require to evaluate the method.

(d) The Board will consider any petitions in accordance with rulemaking procedures outlined in Section 63-46a-12.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board.

R315-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.

(a) The requirements of 40 CFR 260.22, 1993 ed., as amended by 58 FR 46040, August 31, 1993, regarding petitions to exclude a waste are adopted and incorporated by reference with the following amendments:

(1) Substitute "Board" for "Administrator;"

(2) Include the following paragraphs:

(i) The Board will consider any petitions in accordance with rulemaking procedures outlined in Title 63, Chapter 46a, and in accordance with the procedures outlined in the Utah Administrative Procedures Act, Title 63, Chapter 46b, and Rule R315-12.

(ii) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under this section for the relief sought.

R315-2-17. Petition to Amend Rules.

(a) It is the intent of the Board to insure the compatibility and equivalency of R315-1 through R315-101 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.

(b) Any person may petition the Board to modify or revoke any provision in R315-1 through R315-16, R315-50, R315-101, and R315-102. A petition shall be considered under the procedures outlined in 63-46a-12 and R15-2.

R315-2-18. Variances from Classification as a Solid Waste.

The variances from classification as a solid waste of 40 CFR 260.30, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The standards and criteria for variances from classification as a solid waste found in 40 CFR 260.31, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

(1) Substitute "Board" for "Regional Administrator."

R315-2-20. Variance to be Classified as a Boiler.

The provision for a variance to be classified as a boiler as found in 40 CFR 260.32, 1994 ed., as amended by 59 FR 47982, September 19, 1994, is adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.

The procedures for variances from classification as a solid waste or boiler of 40 CFR 260.33, ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.

The provision regarding the regulation of certain hazardous waste recycling activities of 40 CFR 260.40, 1990 ed., is adopted and incorporated by reference with the following amendment:

Substitute "Executive Secretary" for "Regional Administrator."

R315-2-23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.

The Executive Secretary shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in R315-2-6, which incorporates by reference the requirements of 40 CFR 261.6 regarding recyclable materials, under the provisions of 40 CFR 261.6 (b) and (c), rather than under the provisions of 40 CFR 266.70 concerning precious metals recovery.

(a) If a generator is accumulating the waste, the Executive Secretary will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of R315-5. The notice will become final within 30 days, unless the person served requests a public hearing before the Board to challenge the decision. Upon receiving such a request, the Board will hold a hearing. The Board will provide notice of the hearing to the public and allow public participation at the hearing. The Board will issue a final order after the hearing stating whether or not compliance with R315-5 is required. The order becomes effective 30 days after service of the decision unless the Board specifies a later date.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a hazardous waste operation plan approval in accordance with all applicable provisions of R315-3. The owner or operator of the facility must apply for a hazardous waste operation plan approval within no less than 60 days and no more than six months of notice, as specified in the notice. If the

owner or operator of the facility wishes to challenge the Board's decision, he may do so in his hazardous waste operation plan, in a public hearing held on the draft plan approval, or in comments filed on the draft hazardous waste operation plan approval, or on the notice of intent to deny the hazardous waste operation plan. The fact sheet accompanying the hazardous waste operation plan approval will specify the reasons for the Board's determination. The question of whether the Board's decision was proper will remain open for consideration during the public comment period discussed under R315-3-17 and in any subsequent hearing.

R315-2-24. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW-846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

R315-2-25. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under R315-3 through R315-14 of these rules except as specified in section R315-16 of these rules and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under R315-16:

(a) Batteries as described in R315-16-1.2;

(b) Pesticides as described in R315-16-1.3;

(c) Mercury thermostats as described in R315-16-1.4; and

(d) Mercury lamps as described in R315-16-1.6.

R315-2-26. Comparable/Syngas Fuel Exclusion.

The requirements of 40 CFR 261.38, 1998 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

KEY: hazardous waste

December 15, 1999	**19-6-105**
Notice of Continuation March 12, 1997	**19-6-106**

R331. Financial Institutions, Administration.

R331-9. Rule Prescribing Rules of Procedure for Hearings Before the Commissioner of Financial Institutions of the State of Utah.

R331-9-1. Authority, Scope, and Purpose.

(1) This rule is adopted pursuant to Sections 7-1-301 and 7-1-309.

(2) This rule will apply to administrative hearings conducted before the Commissioner or his designee.

R331-9-2. Definitions.

(1) "Commissioner" means the Commissioner of Financial Institutions.

(2) "Department" means the Department of Financial Institutions.

(3) "Interested party" means a party who may be affected by the outcome of any proceeding but who, in the case of a dispute or adjudicative hearing, is not named as a party or does not seek to participate as a named party.

(4) "Party" shall mean the same as a "person" as defined in Section 7-1-103, and shall also include any governmental subdivision or agency.

(5) "Proceeding" shall mean any hearing, whether formal or informal, before the Commissioner or his designee and any and all required and permitted actions precedent thereto.

(6) "U.R.C.P." means the Utah Rules of Civil Procedure.

R331-9-3. Commissioner's Discretion to Commence Hearings.

(1) Except when required by statute, the commissioner shall have sole and complete discretion as to whether any kind of hearing procedure shall be employed in connection with any matter pending before the department.

(2) Nothing in this rule shall be construed as creating any right to a hearing on any matter apart from those rights separately conferred by statute or required by due process of law.

R331-9-4. Types of Hearing.

All hearings conducted before the commissioner or his designee shall be classified in one of the following categories:

(1) Comment Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose for the hearing is to receive information and comments from interested parties concerning a particular subject pending in the department.

(b) Witness statements are unsworn, voluntary and normally delivered in a narrative manner subject to no restriction on the content of the statement except that it be relevant to the matter being heard.

(c) There is no proof to be made and so no burden on any party.

(d) The presentation of evidence may be subject to time restrictions both as to the length of individual statements and the number of statements that can be made.

(e) The hearing is always public.

(2) Dispute Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose is to receive and examine evidence concerning a disputed application or other discretionary matter pending before the department.

(b) The burden of proof is upon the party requesting the approval of the matter at issue.

(c) All testimony is taken under oath and subject to cross-examination but the evidence itself is generally not restricted except as to relevancy.

(d) The hearing is usually public, but may be closed when special circumstances warrant.

(3) Adjudicative Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose is to adjudicate specific charges directed against an individual party or parties.

(b) Evidence is received generally in accordance with rules patterned on those applicable to the admission of evidence and the conduct of trials in the judicial courts of this state.

(c) No time restriction is imposed which would deprive any party of an opportunity to present all proper evidence in the case.

(d) The hearing may be closed to the public and the record treated confidentially.

(4) The commissioner shall have complete discretion to designate a particular hearing as being for comment, dispute, or adjudicative purposes, and shall so indicate in the first notice of the hearing. Any party to the hearing or, in the case of a comment hearing, any interested party who disagrees with the commissioner's classification may file a motion to change the designation of the hearing from one type to the other within ten days after public notice of a comment hearing is first published, or notice of a dispute or adjudicative proceeding is first mailed to a party to the proceeding who objects to its designation, whichever applies.

R331-9-5. Commencement of Proceedings.

(1) Comment Hearing.

Proceedings incident to a comment hearing shall be commenced by the department issuing public notice of the hearing. The notice shall specify:

(a) The subject matter of the hearing,

(b) That it is to be a comment hearing,

(c) The date, time and place of the hearing,

(d) The person or persons who will preside at the hearing, and

(e) Any special provisions or requirements concerning the hearing such as advance notice by any party wishing to speak at the hearing or limits on speaking time.

(2) Dispute Hearing.

(a) A dispute hearing shall be commenced by issuing Notice to the party which filed the application or request at issue and to any party or parties that may have protested or otherwise objected to the same prior to issuance of the Notice.

(b) The Notice shall specify the matters relating to the application or request which are in dispute and advise the party who filed the application or request that it will have the initial burden at the hearing of showing that the application or request should be granted.

(3) Adjudicative Hearing.

(a) An adjudicative hearing shall be commenced when the department issues Notice to the parties named in the proceeding.

(b) If a party to a hearing refuses to sign an acknowledgment of having received a copy of a Notice then such Notice shall be served upon the party in the manner prescribed for service of process in Rule 4 of the U.R.C.P. If personal service is not possible then the commissioner upon motion may authorize alternative forms of service similar to those specified in Rule 4 of the U.R.C.P. If a party resides out of state and cannot be served in this state, a copy of the Notice may be mailed to the party at the party's last known address by certified mail without having to obtain an order from the commissioner.

(c) The Notice of the adjudicative proceeding shall contain at a minimum the following information:

(i) The names of all individual parties to the proceeding.

(ii) A reasonably specific description of the department's allegations against each of the named parties.

(iii) A reasonably specific description of any and all actions the department intends to take against each named party with respect to the matters alleged.

(iv) A statement that within 30 days following service of the department's Notice each party must file an Answer specifically admitting or denying the department's allegations and separately describing in reasonable detail any affirmative defenses the party may claim with respect to the department's allegations.

(v) An express warning that failure to file an Answer within 30 days following service of the Notice will entitle the commissioner to accept the department's allegations as true in their entirety and immediately enter a final order with respect to the matters alleged in the Notice.

(d) If any party named in an adjudicative hearing files a timely and proper Answer then a hearing shall be scheduled before an independent hearing examiner and notice thereof stating the time, date, place of the hearing and identifying the hearing examiner shall be mailed to the answering party. Named parties to a proceeding who do not file a timely and proper Answer shall not be entitled to participate in any subsequent hearing as a party except by leave of the hearing examiner and the commissioner may immediately enter a final order as to such party with respect to the matters alleged in the department's Notice without further adjudicative proceedings.

(e) Proceeding Involving Temporary Cease and Desist Order.

(i) In a proceeding involving a Temporary Cease and Desist Order issued pursuant to Section 7-1-307, the Notice to be served on a party to the proceeding shall include notice that the party is entitled to a show cause hearing concerning the Temporary Cease and Desist Order but must request the same within ten days following service of receipt of the Temporary Cease and Desist Order, in which event the show cause hearing shall be scheduled within ten days after the party's request is received by the department unless the party and the department mutually agree on another time for the hearing.

(ii) In a proceeding involving a Temporary Cease and Desist Order issued pursuant to Section 7-1-307(2), the Order shall state a date, time and place for a hearing before the commissioner, or, if he is unable to preside, before, within ten days after the date the Temporary Cease and Desist Order is signed. The notice shall also advise any interested party that it shall be its burden at the hearing to show cause why the Temporary Cease and Desist Order should not remain in full force and effect for 30 days after it was signed, should not be extended for no more than two successive 15-day periods thereafter, or both.

(f) Upon motion and notice to all other parties to the proceeding, the commissioner or his designee may, for good cause shown, shorten or enlarge any time limits specified herein, including that for scheduling a show cause hearing on a Temporary Cease and Desist Order but excepting the time limits set forth in the foregoing subsection (e)(ii), permit amendments to the department's Notice or any Answer, reschedule a hearing, bifurcate a hearing, permit the joinder of a party, or enter such other preliminary or procedural Order as the commissioner or his designee considers proper and equitable to protect the rights and interests of the parties to the proceeding, expedite the hearing procedure, or both.

R331-9-6. Confidential Proceedings.

(1) If the commissioner deems a proceeding confidential then all pleadings and documents filed in the matter, including the department's initial Notice of the proceedings, shall be conspicuously so designated, and thereafter all such documents shall be made available only to the parties to the proceeding, their legal representatives, and such other parties as may be specifically authorized to examine the documents by the commissioner or his designee.

(2) The only persons who may be present during a confidential hearing are named parties, parties determined by the commissioner or his designee to have a direct interest equivalent to judicial standing in the subject matter of the hearing, the legal representatives of the parties or persons, persons employed by or acting on behalf of the department, the commissioner or his designee, persons necessary to transcribe the proceedings, and any witness then testifying.

R331-9-7. Form of Pleadings.

(1) All pleadings filed with the department shall comply with the requirements of Rule 10 of the U.R.C.P. except for the caption specified in subparagraph (a) thereof. The caption for all pleadings filed with the department shall indicate that the matter is before the Department of Financial Institutions of the State of Utah. In the case of a comment hearing, the documents shall identify the subject matter of the hearing and the subject matter of the particular pleading. In the case of a dispute or adjudicative hearing, the pleadings shall identify all parties to the proceeding, shall separately state that the proceeding is dispute or adjudicative, that it is confidential or not confidential, the subject matter of the pleading, and any case number which may have been assigned to that proceeding by the department. A document that substantially complies with Rule 10 of the U.R.C.P. will be acceptable.

(2) The provisions of Rule 11 of the U.R.C.P. shall apply to all pleadings filed with the department by any attorney representing a party.

R331-9-8. Discovery.

(1) Discovery rights and procedures as specified below shall only be available to parties in a dispute or adjudicative proceeding.

(2) Parties may obtain discovery in any manner authorized by Rules 27, 28, 29, 30, 31, 33, 34, and 36 of the U.R.C.P. Depositions may be used in a hearing before the commissioner or his designee in the same manner as specified for judicial proceedings in Rule 32 of the U.R.C.P.

(3) The commissioner or his designee may impose sanctions for failure to comply with a proper discovery request similar to those specified in Rule 37 of the U.R.C.P.

R331-9-9. Subpoenas.

The commissioner or his designee shall issue subpoenas as authorized by Section 7-1-310 for the purpose of facilitating a proper discovery request or to compel the attendance of a witness at a dispute or adjudicative hearing. Each subpoena shall be obtained by filing a written request with the commissioner or his designee describing the purpose for which the subpoena is sought. If the commissioner or his designee determines that any specific request is objectionable or possibly so then he may either deny the request without further proceedings or schedule a hearing to receive evidence concerning the objection prior to making a final decision on the request.

R331-9-10. Hearings.

(1) Comment Hearings.

Comment hearings shall be held before the commissioner or his designee. A recording shall be made of such hearings capable of being transcribed verbatim. Persons entering statements into the record shall not be sworn on oath and the content of the statements made shall not be restricted except as to irrelevant, scandalous or inappropriate matters. The commissioner or his designee may limit the number of speakers or prescribe time limits for each speaker, or both. After each speaker has made his statement, the commissioner may ask questions of the speaker and permit other participants of the hearing to ask questions of the speaker.

(2) Dispute Hearings.

(a) Dispute hearings shall be heard before the commissioner or his designee.

(b) At the hearing it shall be the burden of the party named in the proceeding to show, by a preponderance of the evidence, that matters in dispute should be resolved in the named party's favor and the application or request at issue should be granted. Similarly, it shall be the burden of any interested party to support each claim made by it concerning the matter at issue by a preponderance of the evidence.

(c) The commissioner or his designee may receive any evidence he deems relevant and of probative value in understanding and deciding the matters at issue. However, all testimony shall be given under oath subject to cross-examination, and whenever possible the rules of evidence and trial procedure applicable to the courts of this state shall be generally complied with.

(d) No findings, conclusions, order or other decision shall be prepared concerning the hearing itself. If a designee of the commissioner presides then he shall prepare a report to the commissioner summarizing the evidence presented for the purpose of assisting the commissioner in reaching a final decision on the matter to which the hearing pertained.

(3) Adjudicative Hearings.

(a) Except for a show cause hearing concerning a Temporary Order or a Temporary Cease and Desist Order, all adjudicative hearings shall be held before an independent hearing officer selected by the commissioner.

(b) At the hearing it shall be the department's responsibility to establish by a preponderance of the evidence the allegations it has made against each party named in the proceeding. Similarly, any named party shall prove any affirmative defense it has claimed by a preponderance of the evidence. All evidence shall be presented, rebutted and received or excluded in accordance with the Rules of Evidence and the U.R.C.P. except the hearing officer may receive other evidence when, in the examiner's discretion, taking into account its lesser probative value, such other evidence would be of use in supplementing or tending to confirm any admitted evidence or proffered evidence subject to its admission.

(c) After the hearing has been concluded, the hearing officer shall prepare Findings, Conclusions and Recommendations for the commissioner. At the same time as the original is delivered to the commissioner, copies of the Findings, Conclusions and Recommendations shall be mailed to all attorneys and named parties who participated in the proceedings.

(d) After receiving the Findings, Conclusions and Recommendations, the commissioner shall enter an Order, or remand the matter back to the hearing officer to conduct further proceedings on the subjects as may be specified by the commissioner, or dismiss the proceedings in whole or in part.

(e)(i) Within 15 days after the hearing officer's Findings, Conclusions and Recommendations are mailed to a party, that party shall file a notice of any objections the party may have specifying each Finding, Conclusion or Recommendation objected to and describing in reasonable detail the basis for each objection.

(ii) A party may request reconsideration of any Order resulting from an adjudicative proceeding within 30 days after a copy of the Order is mailed to the party by the department. Each request shall specify in reasonable detail the party's reasons supporting the request and may, with leave from the commissioner, be accompanied by a memo of points and authorities to which all other parties may respond, all within deadlines to be specified in the commissioner's grant of leave.

(iii) The commissioner may enter an Order whether or not the deadline for filing objections to Findings, Conclusions and Recommendations has elapsed. The timely filing of objections shall not affect the implementation of any Order already entered, or bar the entry of an Order based in any degree on any Finding, Conclusion or Recommendation objected to before ruling on the objection, except the Order shall not be deemed final until the objections have been ruled on by the commissioner. The 30 days allowed for requesting reconsideration of any Order shall not be tolled by the filing of objections to precedent Findings, Conclusions and Recommendations.

(f) The commissioner may require the parties to the

proceeding to pay any costs and expenses incident to the hearing as he deems proper including reporter or other transcription expenses, fees of the hearing officer, witness costs, fees for examiner time based on the normal rate charged for examinations, and attorney's fees.

(g) A show cause hearing on a Temporary Order or a Temporary Cease and Desist Order shall be held before the commissioner or his designee. If neither the commissioner nor the commissioner's designee is available to preside at the hearing within the required period then the Temporary Order shall be dissolved, without prejudice.

KEY: financial institutions, government hearings
1995 7-1-301
Notice of Continuation August 8, 1997 7-1-309

R333. Financial Institutions, Banks.

R333-10. Securities Activities of Subsidiaries and Affiliates of State-Chartered Banks.

R333-10-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-3-3.2 and 7-3-21.

(2) This rule sets forth standards to govern securities activities of state chartered banks.

(3) The purpose of this rule is to establish safeguards to ensure that subsidiaries or affiliates engaged in securities activities do not endanger the safeness and soundness of state chartered banks.

R333-10-2. Definitions.

(1) "Affiliate" means any company that directly or indirectly, through one or more intermediaries, controls or is under common control with a state chartered bank.

(2) "Bona fide subsidiary" means a subsidiary of a bank that at a minimum:

(a) Is adequately capitalized;

(b) Is physically separate and distinct from the depository operations of the bank;

(c) Does not share a common name or logo with the bank;

(d) Maintains separate accounting and other corporate records;

(e) Shares no common officers or employees with the bank or its holding company;

(f) A majority of its board of directors is composed of persons who are neither directors nor officers of the bank or its holding company;

(g) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or its holding company nor are otherwise obligations of the bank or its holding company.

(3) "Company" means any corporation, other than a bank, any partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.

(4) "Control" means "control" as defined in Section 7-1-103.

(5) "Extension of credit" means the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes:

(a) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) Issuance of a standby letter of credit, or other similar arrangement regardless of name or description;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(f) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for

(i) accrued interest or

(ii) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(g) Any other transaction as a result of which a natural person or company becomes obligated to pay money, or its equivalent to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(6) "Investment quality debt security" means a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture, the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation.

(7) "Investment quality equity security" means marketable common stock that is ranked or graded in the top four categories or equivalent categories by a nationally recognized rating service, marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service, or marketable preferred corporate stock that has investment characteristics that are equivalent to the investment characteristics of top rated preferred corporate stock.

(8) "Subsidiary" means any company controlled by a bank.

(9) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserve for loan losses, and subordinated notes and debentures with more than one year maturity.

R333-10-3. Investment in Securities Activities.

(1) No bank with total capital of less than 7% of its total assets may invest in a securities subsidiary.

(2) No bank may invest more than 10% of its capital in a securities subsidiary.

(3) A bank may not establish or acquire a subsidiary that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities; conducts any activities for which the subsidiary is required to register with the Securities and Exchange Commission as a broker-dealer; acts as an investment adviser to any investment company; or engages in any other securities activity unless and except as otherwise provided by (4)(b) of this section, the subsidiary's underwriting activities that would not be authorized to the bank under Section 16 of the Glass-Steagall Act, 12 U.S.C. Sec. 24, Seventh, as made applicable to insured nonmember banks by Section 21 of the Glass-Steagall Act, 12 U.S.C. Sec. 378, are limited to, and therefore continue to be limited to, one or more of the following:

(a) underwriting of investment quality debt securities,

(b) underwriting of investment quality equity securities,

(c) underwriting of investment companies not more than 25% of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities, or

(d) underwriting of investment companies not more than 25% of whose investments consist of investments other than

obligations of the United States or United States Government agencies, repurchase agreements involving such obligations, bank certificates of deposit, banker's acceptances and other bank money instruments, short-term corporate debt instruments, and other similar investments normally associated with a money market fund; and that subsidiary conducts securities activities not authorized to the bank under section 16 of the Glass-Steagall Act, 12 U.S.C. Sec. 24, Seventh, as made applicable to insured nonmember banks by section 21 of the Glass-Steagall Act, 12 U.S.C. Sec. 378.

(4) Subsection (3) of this section not withstanding, a subsidiary of a state-chartered bank may engage in underwriting activities other than as limited thereby provided that the following conditions are met:

(a) The subsidiary is a member in good standing of the National Association of Securities Dealers, "NASD";

(b) The subsidiary has been in continuous operation for the five year period preceding notice to the commissioner as required by this part;

(c) No director, officer, general partner, employee, or 10% shareholder of any class of voting securities of the subsidiary has been charged within five years of the notice required by this part of any felony or misdemeanor:

(i) involving the making of a false filing with the Securities and Exchange Commission or the Utah Securities Division or the securities agency of another state or

(ii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(d) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10% shareholders of any class of voting securities of the subsidiary is or has been subject to any state or federal administrative order or court order, judgment, or decree entered within five years of the notice required by this part temporarily or preliminarily enjoining or restraining such person or the subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the Securities and Exchange Commission or the Utah Securities Division or the securities agency of another state or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(e) None of the subsidiary's directors, officers, general partners, employees, or 10% shareholders of any class of voting securities of the subsidiary are or have been subject to an order entered within five years of the notice required by this part issued by:

(i) the Securities and Exchange Commission entered pursuant to Section 15(b) or 15B(c) of the Securities Exchange Act of 1934, 15 U.S.C. 780, 78o-4, or Section 230(c) or (f) of the Investment Advisors Act of 1940, 15 U.S.C. 80b-3(c), or (f);

(ii) the Utah Securities Division entered pursuant to Sections 61-1-1 or 61-1-2; or

(iii) the state securities agency of another state which are similar to Sections 61-1-1 and 61-1-2.

(f) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years experience in similar activities at NASD member securities firms.

R333-10-4. Affiliation With a Securities Company.

A state chartered bank is prohibited from becoming affiliated with any company that directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities unless:

(1) The securities business of the affiliate is physically separate and distinct from the bank;

(2) The bank and affiliate share no common officers or employees;

(3) A majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate;

(4) No employee of the bank conducts securities activities on behalf of the affiliate on the premises of the bank;

(5) The bank and affiliate do not share a common name or logo; and

(6) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or its holding company nor are otherwise obligations of the bank or its holding company.

R333-10-5. Filing a Notice.

(1) A bank or bank holding company shall notify the Commissioner of Financial Institutions of its intent to acquire or establish a subsidiary that:

(a) sells, distributes or underwrites stocks, bonds, debentures, notes, or other securities;

(b) acts as an investment advisor to any investment company;

(c) conducts any activity for which the subsidiary is required to register with the Securities and Exchange Commission as a broker-dealer; or

(d) engages in any other securities activity.

(2) Notice shall be in writing and must be received by the commissioner at least 60 days prior to the consummation of the acquisition or operation of the subsidiary, whichever is earlier.

(3) The 60-day notice requirement may be waived at the commissioner's discretion where such notice is unpracticable in the case of a purchase and assumption transaction or a supervisory merger.

R333-10-6. Restrictions.

A bank which has a subsidiary or affiliate that engages in the sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities, or acts as an investment company shall not:

(1) Purchase in its discretion as fiduciary, co-fiduciary, or managing agent any security currently distributed, currently underwritten, or issued by such subsidiary or affiliate or purchase as fiduciary, co-fiduciary, or managing agent any security currently issued by an investment company advised by such subsidiary or affiliate, unless:

(a) The purchase is expressly authorized by the trust

instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure;

(b) The purchase, although not expressly authorized under Subsection (1)(a), is otherwise consistent with the insured nonmember bank's fiduciary obligation, or the purchase is permissible under applicable federal or state statute or rule, or both;

(2) Transact business through its trust department with such subsidiary or affiliate unless the transactions are at least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank;

(3) Extend credit or make any loan directly or indirectly to any company the stock, bonds, debentures, notes or other securities of which are currently underwritten or distributed by such subsidiary or affiliate of the bank unless the company's stocks, bonds, debentures, notes or other securities that are underwritten or undistributed qualify as investment quality debt securities, or qualify as investment quality equity securities.

(4) Extend credit or make any loan directly or indirectly to any investment company whose shares are currently underwritten or distributed by such subsidiary or affiliate of the bank;

(5) Extend credit or make any loan where the purpose of the extension of credit or loan is to acquire:

(a) Any stock, bond, debenture, note, or other security currently underwritten or distributed by the subsidiary or affiliate;

(b) Any security currently issued by an investment company advised by the subsidiary or affiliate; or

(c) Any stock, bond, debenture, note or other security issued by the subsidiary or affiliate, except that a bank may extend credit or make a loan to employees of the subsidiary or affiliate for the purpose of acquiring securities of the subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board of trustees of the subsidiary or affiliate.

(6) Make any loan or extension of credit to a subsidiary or affiliate of the bank that:

(a) Distributes or underwrites stocks, bonds, debentures, notes, or other securities, or

(b) Advises any investment company if the loans or extensions of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and that are not within any exemptions established thereby.

(7) Make any loan or extension of credit to any investment company for which the bank's subsidiary or affiliate acts as an investment adviser if the loan or extension of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and that are not within any exemptions established thereby; and

(8) Directly or indirectly condition any loan or extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's subsidiary or affiliate to underwrite or distribute the company's securities or directly or indirectly condition any loan or extension of credit to any person on the requirement that the person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate.

R333-10-7. Nonmember Banks Not Authorized to Participate in Securities Activities.

Nothing in this section authorizes an insured nonmember bank to directly engage in any securities activity not authorized to it under Sections 16 and 21 of the Glass-Steagall Act, 12 U.S.C. 24, Seventh and 378.

KEY: banks and banking, securities, subsidiaries
1995 7-3-21
Notice of Continuation September 25, 1997

R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-802. HIV Positive Student or School Employee Rule.
R388-802-1. Authority and Purpose.

1. The HIV Positive Student or School Employee Rule is established under authority of Section 26-1-30.

2. The purpose of R388-802 is to establish standards relating to HIV infection in the schools in order to (a) reduce the risk to susceptible individuals and (b) protect infected individuals against both unreasonable health risks and unnecessary restrictions in activities and associations.

R388-802-2. Definitions.

1. "Director" means the executive director of the Utah Department of Health.

2. "Employee" means anyone employed by a school or serving as a volunteer with the permission of a school.

3. "HIV" means human immunodeficiency virus.

4. "HIV Infection" is defined as an indication of the presence of human immunodeficiency virus (HIV) as detected by any of the following:

4.1. Presence of antibodies to HIV, verified by appropriate confirmatory tests.

4.2. Presence of HIV antigen.

4.3. Isolation of HIV.

4.4. Demonstration of HIV proviral DNA.

5. "Review committee" or "committee" means a group consisting of a school administrator, a representative from the local health department, the subject's physician, the subject or, in the case of a minor, the subject's parents or guardian. The committee is appointed and chaired by the school administrator.

6. "School" means a licensed or unlicensed public or private nursery school, preschool, elementary or secondary school, day-care center, child-care facility, family-care facility, or head-start program.

7. "School administrator" means the person designated by the superintendent to implement this rule.

8. "School board" means the board of education of an affected public school district or the governing body of an affected facility or program which is not part of a public school district.

9. "Student" means anyone enrolled in a school.

10. "Subject" means a person who is the focus of deliberations by a review committee.

11. "Superintendent" means the superintendent of an affected school district or the chief administrative officer of an affected school which is not part of a public school district.

R388-802-3. Confidentiality.

1. The identities or other case details of HIV-infected subjects shall not be disclosed to any person other than the members of the review committee and the pertinent superintendent.

2. Penalties for violation of confidentiality are prescribed under Section 26-6-29.

R388-802-4. Anti-discrimination.

1. In the school setting, no person shall be discriminated against, or denied activities or associations, based solely upon a diagnosis of HIV infection except as permitted under this rule.

R388-802-5. Requirements for Determining if a Student or Employee Infected with HIV Should Remain in the Regular Classroom or Job Assignment.

1. Upon notification that a student or employee has been diagnosed with HIV infection, the school administrator shall convene a review committee.

2. A student or employee infected with HIV shall continue in his regular classroom or job assignment until a review committee can meet and formulate recommendations.

3. The committee shall review all pertinent information including current findings and recommendations of the United States Public Health Service, the American Academy of Pediatrics, and the Utah Department of Health; apply that information to the subject and the nature of activities and associations in which the subject is involved with the school; and establish written findings of fact and recommendations based upon reasonable medical judgments and other information concerning the following:

3.1. The nature of the risk of transmission of HIV relevant to the activities of the subject in the school setting;

3.2. The probability of the risk, particularly the reasonable likelihood that HIV could be transmitted to other persons by the subject in the school setting;

3.3. The nature and the probability of any health related risks to the subject;

3.4. If restrictions are determined to be necessary, what accommodations could be made by the school to avoid excessive limitations on activities and associations of the subject.

4. The review committee shall forward its findings and recommendations to the superintendent.

5. The school administrator will implement the recommendations without delay.

6. The school administrator shall immediately advise the subject or, in the case of a minor, the subject's parents or guardian, in writing, of the decision of the review committee and that continued participation in the school setting may result in exposure to other communicable diseases.

7. The school administrator shall review the committee's decision on a regular basis and may reconvene the committee if, in his opinion, the facts of the case have changed.

R388-802-6. Liability.

Responsibility for continued participation in the classroom or job assignment, despite potential personal risk, shall be left to the discretion of the subject or, in case of a minor, the subject's parents or guardian.

R388-802-7. Appeal Process.

1. The superintendent or any member of the review committee may appeal the recommendation of the committee by submitting a written appeal within ten school days for students or ten working days for employees, after receiving notice of the committee's recommendations. If the appellant's concerns relate to medical issues, the appeal shall be submitted to the director, and the director, or designee, may order restrictions on the school-related activities or associations of the subject or may

stay implementation of the committee's recommendations. If the concerns relate to the school's ability to provide an accommodation, the appeal shall be directed to the school board.

2. The appellant shall submit copies of any appeal to the director, the superintendent, and all other members of the review committee.

3. The director or the school board shall review the findings and recommendations of the committee and any additional information that the director or board finds to be pertinent to the question raised in the appeal, and shall render a final decision in writing within ten school days for students or ten working days for employees.

4. Copies of the decision shall be sent to the appellant, members of the review committee, and the superintendent.

5. The superintendent shall implement the decision without delay.

6. Judicial review of any decision rendered under this section by the director or the school board may be secured by persons adversely affected thereby by filing an action for review in the appropriate court of law.

R388-802-8. Special Procedures.

1. A superintendent may suspend a subject from school or school employment for a period not to exceed ten school days for students or ten working days for employees, prior to receiving the recommendation of a review committee if the superintendent determines that there are emergency conditions which present a reasonable likelihood that suspension is medically necessary to protect the subject or other persons.

2. If the subject is unable to obtain the services of a physician to serve on the review committee, the local health officer may appoint a licensed physician to provide consultation.

R388-802-9. Procedures for Handling Blood or Body Fluids.

1. Each school shall adopt routine procedures for handling blood or body fluids, including sanitary napkins, regardless of whether students or employees with HIV infections are known to be present. The procedures should be consistent with recommendations of the United States Public Health Service, the American Academy of Pediatrics, and the Utah Department of Health.

R388-802-10. Penalties.

1. Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including R388-802, are prescribed under Section 26-23-6.

KEY: communicable diseases, AIDS*, HIV*
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Notice of Continuation October 13, 1997

R501. Human Services, Administration, Administrative Services, Licensing.
R501-19. Residential Treatment Programs.
R501-19-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing shall license residential treatment programs according to the following rules.

R501-19-2. Purpose.

Residential treatment programs offer room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment programs, consumers are assisted in acquiring the social and behavioral skills necessary for living independently in the community in accordance with Subsection 62A-2-101(15).

R501-19-3. Definition.

Residential treatment program means a 24-hour group living environment for four or more individuals unrelated to the owner or provider in accordance with Subsection 62A-2-101(15).

R501-19-4. Administration.

A. In addition to the following rules, all Residential Treatment Programs shall comply with R501-2, Core Standards.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-19-5. Staffing.

A. The program shall have an employed manager who is responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

B. The program shall have a staff person trained, by a certified instructor, in standard first aid and CPR on duty with the consumers at all times.

C. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

D. Professional staff shall include the following individuals who have received training in the specific area listed below:

1. Mental Health

a. a licensed physician or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist,

c. a licensed mental health therapist,

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or a consulting advanced practice registered nurse-psychiatric mental health nurse specialist, and

e. if unlicensed staff are used, they shall be supervised by a licensed clinical professional.

2. Substance Abuse

a. a licensed physician, or a consulting licensed physician,

b. a licensed psychologist or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed, mental health therapist, and

d. a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

3. Children and Youth

a. a licensed physician, or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist, and

c. a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service to the program per week per consumer enrolled.

d. A licensed medical practitioner, by written agreement, shall be available to provide, as needed, a minimum of one hour of service per week for every two consumers enrolled.

e. Other staff trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth shall be under the supervision of a licensed clinical professional.

f. A minimum of two staff on duty and, a staff ratio of no less than one staff to every four consumers shall exist at all times, except nighttime sleeping hours when staff may be reduced.

g. A mixed gender population shall have at least one male and one female staff on duty at all times.

4. Services for People With Disabilities shall have a staff person responsible for program supervision and operation of the facility. Staff person shall be adequately trained to provide the services and treatment stated in the consumer plan.

R501-19-6. Direct Service.

Treatment plans shall be reviewed and signed by the clinical supervisor. Treatment plans shall be reviewed and signed by the clinical supervisor, or other qualified individuals for Division of Services for People With Disabilities services. Plans shall be reviewed and signed as noted in the treatment plan.

R501-19-7. Physical Facilities.

A. The program shall provide written documentation of compliance with the following items as applicable:

1. local zoning ordinances,
2. local business license requirements,
3. local building codes,
4. local fire safety regulations,
5. local health codes, and
6. local approval from the appropriate government agency for new program services or increased consumer capacity.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-19-8. Physical Environment.

A. Live-in staff shall have separate living space with a private bathroom.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Indoor space for free and informal activities of consumers shall be available.

D. Provision shall be made for consumer privacy.

E. Space shall be provided for private and group counseling sessions.

F. Sleeping Space

1. No more than four persons, or two for Division of Services for People With Disabilities programs, shall be housed in a single bedroom.

2. A minimum of sixty square feet per consumer shall be provided in a multiple occupant bedroom. Storage space will not be counted.

3. A minimum eighty square feet per individual shall be provided in a single occupant bedroom. Storage space will not be counted.

4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

5. Each bed, none of which shall be portable, shall be solidly constructed, and be provided with clean linens after each consumer stay and at least weekly.

6. Sleeping quarters serving male and female residents shall be structurally separated.

7. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.

G. Bathrooms

1. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe condition.

2. Bathrooms shall accommodate consumers with physical disabilities as required.

3. Each bathroom shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene.

4. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

5. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, and one tub or shower for each six residents.

6. There shall be toilets and baths or showers which allow for individual privacy.

7. There shall be mirrors secured to the walls at convenient heights.

8. Bathrooms shall be located as to allow access without disturbing other residents during sleeping hours.

H. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.

I. All furniture and equipment shall be maintained in a clean and safe condition.

J. Programs which permit individuals to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.

K. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

L. Laundry appliances shall be maintained in a clean and safe operating condition.

R501-19-9. Food Service.

A. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

B. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

C. The program shall establish and post kitchen rules and privileges according to consumer needs.

D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

E. Meals may be prepared at the facility or catered.

F. Kitchens shall have clean, safe, and operational equipment for the preparation, storage, serving, and clean up of all meals.

G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

H. When meals are prepared by consumers there shall be a written policy to include the following:

1. rules of kitchen privileges,
2. menu planning and procedures,
3. nutritional and sanitation requirements, and
4. schedule of responsibilities.

R501-19-10. Medication.

A. The program shall have locked storage for medications.

B. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

C. Prescriptive medication shall be provided as prescribed by a qualified physician, according to the Medical Practices Act.

D. The program shall have designated qualified staff, who shall be responsible to:

1. administer medication,
2. supervise self-medication,
3. record medication, including time and dosage, according to prescription, and
4. record effects of medication.

R501-19-11. Specialized Services for Substance Abuse.

A. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

B. At a minimum, the program shall document that direct service staff complete standard first aid and CPR training within six months of being hired. Training shall be updated as required by the certifying agency.

C. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health authority.

R501-19-12. Specialized Services for Programs Serving Children and Youth.

A. Provisions shall be available for adolescents to

continue their education with a curriculum approved by the State Office of Education.

B. Programs which provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.

C. Individual, group, couple, and family counseling sessions or other appropriate treatment, including skills development, shall be conducted at least weekly, or more often if defined by the treatment plan. The consumer's record shall document the time and date of the service provided and include the signature of the counselor.

D. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over $20.00 per item, shall be substantiated by receipts signed by the consumer and appropriate staff.

R501-19-13. Specialized Services for Division of Services for People With Disabilities.

A. Rules governing the daily operation and activities of the facility shall be available to all consumers and visitors, and shall apply to family members, consumers, and staff that come into the facility.

B. The program shall have policy specifying the amount of time family or friends may stay as overnight guests.

C. All consumers in residential programs shall have an individual plan that addresses appropriate day treatment.

D. A monthly schedule of activities shall be shared with the consumer and available on request. Schedules shall be filed and maintained for review.

E. A record of income, earned, unearned, and consumer service fees, shall be maintained by the provider.

F. Residential facilities shall be located where school, church, recreation, and other community facilities are available.

G. An accurate record shall be kept of all funds deposited with the residential facility for use by a consumer. This record shall contain a list of deposits and withdrawals. Consumer purchases of over $20.00, per item, shall be substantiated by receipts signed by the consumer and professional staff. A record shall be kept of consumer petty cash funds.

H. The program, in conjunction with the parent or guardian and the Division of Services for People With Disabilities support coordinator, shall apply for unearned income benefits for which a consumer is entitled.

KEY: human services, licensing
May 2, 2000 62A-2-101 et seq.

R501. Human Services, Administration, Administrative Services, Licensing.
R501-20. Day Treatment Programs.
R501-20-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing, shall license day treatment programs according to the following rules.

R501-20-2. Purpose.

A day treatment program provides services to individuals who have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies. Day treatment is provided in lieu of, or in coordination with, a more restrictive residential or inpatient environment or service in accordance with Subsection 62A-2-101(4).

R501-20-3. Definition.

Day treatment program means specialized treatment for less than 24 hours a day, for four or more persons who are unrelated to the owner or provider pursuant to Subsection 62A-2-101(4).

R501-20-4. Administration.

A. In addition to the following rules, all Day Treatment Programs shall comply with R501-2, Core Standards.

B. A list of current consumers shall be available and on-site at all times.

R501-20-5. Staffing.

A. The program shall have an employed manager who is responsible for the day to day supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent, there shall be a substitute available.

B. The program shall have a staff person trained, by a certified instructor, in first aid and CPR on duty with the consumers at all times.

C. Staffing Ratios

1. The minimum ratio shall be one direct care staff to ten consumers. In Division of Services for People With Disabilities programs, consumer ratios shall be determined by type of activity.

2. When 10% or more of the consumers are non-ambulatory, the ratio shall be one direct care staff to seven consumers.

D. Professional staff shall include the following individuals who have received training in the specific area listed below:

1. Mental Health

a. a licensed physician, or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed mental health therapist, and

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or a consulting licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

e. If unlicensed staff are used they shall be supervised by a licensed clinical professional.

2. Substance Abuse

a. a licensed physician or consulting licensed physician,

b. a licensed psychologist or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed mental health therapist, and

d. a licensed substance abuse counselor or unlicensed staff who work with substance abuses shall be supervised by a licensed clinical professional.

3. Children and Youth

a. a licensed physician, or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service per week per consumer enrolled in the program, and

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or consulting licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

e. If unlicensed staff are used, they shall be trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth and shall be under the supervision of a licensed clinical professional.

4. Services for People With Disabilities

a. a staff person responsible for consumer supervision and operation of the facility, and

b. trained staff to provide the services and treatment stated in the consumer's plan.

R501-20-6. Direct Service.

A. Day treatment activity plans shall be prepared to meet individual consumer needs. Daily activity plans may include behavioral training, community living skills, work activity, work adjustment, recreation, self-feeding, self-care, toilet training, social appropriateness, development of gross and fine motor skills, interpersonal adjustment, mobility training, self-sufficiency training, and to encourage optimal mental or physical function, speech, audiology, physical therapy, and psychological services, counseling, and socialization.

B. A daily activity or service schedule shall be designed and implemented.

C. While on-site, consumers shall be supervised as necessary and encouraged to participate in activities.

D. All consumers shall be afforded the same quality of care.

R501-20-7. Physical Environment.

A. The program shall provide written documentation of compliance with the following:

1. local zoning ordinances,
2. local business license requirements,
3. local building codes,
4. local fire safety regulations,
5. local health codes, and
6. local approval from the appropriate government agency for new program services or increased consumer capacity.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-20-8. Physical Facility.

A. The program shall have a minimum of fifty square feet of floor space per consumer designated specifically for day treatment. Hallways, office, storage, kitchens, and bathrooms will not be included in computation.

B. Outdoor recreational space and compatible recreational equipment shall be available when necessary to meet treatment plans.

C. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs and shall be maintained in a clean and safe condition.

D. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

E. Equipment

Equipment for work activities shall be kept in safe operating condition.

1. Power equipment shall be installed and maintained in accordance with the National Electrical Code.

2. When operating power equipment, the operator shall wear safe clothing and protective eye gear.

3. Rings and watches are not to be worn, and long hair shall be confined when operating power equipment.

4. Consumer exposure to hazardous materials shall be controlled as defined in Utah State Industrial Regulations.

F. Bathrooms

1. The program shall have one or more bathrooms each for males and females in accordance with current uniform building codes. They shall be maintained in good operating order and in a clean and safe condition.

2. Bathrooms shall accommodate consumers with physical disabilities as required.

3. Bathrooms shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene.

4. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

R501-20-9. Food Service.

A. One person shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

B. The person responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

C. When meals are prepared by consumers, there shall be a written policy to include the following:

1. rules of kitchen privileges,
2. menu planning and procedures,
3. nutritional and sanitation requirements, and
4. schedule of responsibilities.

D. The program shall provide adequate storage and refrigeration for meals carried to the program by consumers.

E. Kitchens shall have clean, operational equipment for the preparation, storage, serving, and clean up of all meals.

F. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

R501-20-10. Medication.

A. Prescriptive medication shall be provided as prescribed by a qualified person according to the Medical Practices Act.

B. The program shall have locked storage for medication.

C. The program shall have written policy and procedure to include the following:

1. self administered medication,
2. storage,
3. control, and
4. release and disposal of drugs in accordance with federal and state regulations.

KEY: human services, licensing
May 2, 2000 62A-2-101 et seq.

R501. Human Services, Administration, Administrative Services, Licensing.
R501-21. Outpatient Treatment Programs.
R501-21-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing, shall license outpatient treatment programs according to the following rules.

R501-21-2. Purpose.

Outpatient treatment programs shall serve consumers who require less structure than offered in day treatment or residential treatment programs. Consumers are provided treatment as often as determined and noted in the treatment plan.

R501-21-3. Definition.

Outpatient treatment program means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment in accordance with Subsection 62A-2-101(12).

R501-21-4. Administration.

A. In addition to the following rules, all Outpatient Treatment Programs shall comply with R501-2, Core Standards.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-21-5. Staffing.

Professional staff shall include at least one of the following individuals who has received training in the specific area listed below:

A. Mental Health

1. a licensed physician, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. If unlicensed staff are used, they shall not supervise clinical programs. Unlicensed staff shall be trained to work with psychiatric consumers and be supervised by a licensed clinical professional.

B. Substance Abuse

1. a licensed physician, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. A licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

C. Children and Youth

1. a licensed psychiatrist, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. If the following individuals are used they shall not supervise clinical programs: A person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or a second year graduate student training for one of the above degrees.

D. Domestic Violence

1. a licensed psychiatrist, or
2. a licensed psychologist, or
3. a licensed clinical social worker, or
4. a licensed marriage and family therapist, or
5. a licensed professional counselor, or
6. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or
7. a person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or
8. a second year graduate student in training for one of the above degrees, or
9. a licensed social services worker with at least three years of continual, full time, related experience, when practicing under the direction and supervision of a licensed clinical professional.
10. Individuals from categories g.h. above shall not supervise clinical programs. Individuals in category i. above shall not supervise clinical programs, and may only co-facilitate group therapy sessions with a person qualified per paragraphs a. through f. above.

R501-21-6. Direct Service.

A. Treatment plans shall be developed based on assessment and evaluation of individual consumer needs. The treatment may be consultive and may include medication management.

B. Treatment plans shall be reviewed and signed by a licensed clinical professional as frequently as determined in the treatment plan.

C. Except for Domestic Violence, individual, group, couple, or family counseling sessions shall be provided to the consumer as frequently as determined in the treatment plan. In the consumer's record and in the progress notes, the date of the session and the provider shall be documented. Treatment sessions may be provided less frequently than once a month if approved by the clinical supervisor and justified in the consumer record.

D. Domestic violence treatment programs shall comply with generally accepted practices in the current domestic violence literature and the following requirements:

1. Maintain and document cooperative working relationships with domestic violence shelters, treatment programs, referring agencies, custodial parents when the consumer is a minor and local domestic violence coalitions. If the consumer is a perpetrator, contact with victims, current partner, and the criminal justice referring agencies is also required, as appropriate.

2. Treatment sessions for each perpetrator, not including orientation and assessment interviews, shall be provided for at

least one hour per week for a minimum of sixteen weeks. Treatment sessions for children and victims shall offer a minimum of 10 sessions for each consumer not including intake or orientation.

3. Staff to Consumer Ratio:

a. The staff to consumer ratio in adult treatment groups shall be one to eight for a one hour long group or one to ten for an hour and a half long group. The maximum group size shall not exceed sixteen.

b. Child victim or child witness groups shall have a ratio of one staff to eight children when the consumers are under twelve years of age, and a one staff to ten children ratio when the consumers are twelve years of age or older.

c. When any consumer enters a treatment program the staff shall conduct an in-depth, face to face interview and assessment to determine the consumer's clinical profile and treatment needs. For perpetrator consumers, additional information shall be obtained from the police incident report, perpetrator's criminal history, prior treatment providers, and the victim. When appropriate, additional information for child consumers shall be obtained from parents, prior treatment providers, schools and Child Protective Services. When any of the above information cannot be obtained the reason shall be documented. The assessment shall include the following:

1) a profile of the frequency, severity and duration of the domestic violence behavior, which includes a summary of psychological violence,

2) documentation of any homicidal, suicidal ideation and intentions as well as abusive behavior toward children,

3) a clinical diagnosis and a referral for evaluation to determine the need for medication if indicated,

4) documentation of safety planning when the consumer is an adult victim, child victim, or child witness, and that they have contact with the perpetrator. For victims who choose not to become treatment consumers, safety planning shall be addressed when they are contacted, and

5) documentation that appropriate measures have been taken to protect children from harm.

4. Consumers deemed appropriate for a domestic violence treatment program shall have an individualized treatment plan, which addresses all relevant treatment issues. Consumers who are not deemed appropriate for domestic violence programs shall be referred to the appropriate resource, with the reasons for referral documented and notification given to the referring agency. Domestic violence counseling shall be provided when appropriate, concurrently with or after other necessary treatment.

5. Conjoint or group therapy sessions with victims and perpetrators together or with both co-perpetrators shall not be provided until a comprehensive assessment has been completed to determine that the violence has stopped and that conjoint treatment is appropriate. The perpetrator must complete a minimum of 12 domestic violence treatment sessions prior to implementing conjoint therapy.

6. A written procedure shall be implemented to facilitate the following in an efficient and timely manner:

a. entry of the court ordered defendant into treatment,

b. notification of consumer compliance, participation or completion,

c. disposition of non-compliant consumers,

d. notification of the recurrence of violence, and

e. notification of factors which may exacerbate an individual's potential for violence.

7. Comply with the "Duty to Warn," Section 78-14a-102.

8. Document specialized training in domestic violence assessment and treatment practices including 24 hours of pre-service training within the last two years and 16 hours of training annually thereafter for all individuals providing treatment services.

9. Clinical supervision for treatment staff who are not clinically licensed shall consist of a minimum of an hour a week to discuss clinical dynamics of cases.

R501-21-7. Physical Environment.

A. The program shall provide written documentation of compliance with the following:

1. local zoning ordinances,

2. local business license requirements,

3. local building codes,

4. local fire safety regulations, and

5. local health codes.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-21-8. Physical Facility.

A. Space shall be provided for private and group counseling sessions.

B. The program shall have storage for the following:

1. locked storage for medications, and

2. locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

C. Equipment

1. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer plans.

2. All furniture and equipment shall be maintained in a clean and safe condition.

D. Bathrooms

1. Bathrooms shall accommodate physically disabled consumers.

2. Each bathroom shall be maintained in good operating order and be properly equipped with toilet paper, towels, and soap.

3. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

KEY: human services, licensing
May 2, 2000 **62A-2-101 et seq.**

R501. Human Services, Administration, Administrative Services, Licensing.
R501-22. Residential Support Programs.
R501-22-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing, shall license residential support programs according to the following rules.

R501-22-2. Purpose.

Residential support programs arrange for or provide the necessities of life as a protective service to individuals or families who are experiencing a dislocation or emergency which prevents them from providing these services for themselves or their families. Treatment is not a necessary component of residential support, however treatment shall be made available on request.

R501-22-3. Definition.

Residential Support program means a 24-hour group living environment, providing room and board for four or more consumers unrelated to the owner or provider in accordance with Subsection 62A-02-101(14).

R501-22-4. Administration.

A. In addition to the following rules, all Residential Support Programs shall comply with R501-2, Core Standards.

B. The program shall ensure that consumers receive direct service from an assigned worker or other appropriate professional.

C. A list of current consumers shall be available and on-site at all times.

R501-22-5. Staffing.

A. The program shall have an employed manager responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute to assume managerial responsibility as needed. With the exception of Domestic Violence Shelters, adult programs are not required to provide twenty four hour supervision.

B. The program shall make arrangement for medical backup with a medical clinic or physician licensed to practice medicine in the State of Utah.

C. During normal staff hours, the program shall have at least one person on duty who has completed and remains current in a certified first aid and CPR program.

D. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers providing care in Domestic Violence Shelters, without paid staff present, shall have direct communication access to designated staff at all times. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

R501-22-6. Direct Service.

This section supersedes core standards, Section R501-2-8.

A. The program consumer records shall contain the following:

1. name, address, telephone number, admission date, and personal information as required by the program,

2. emergency information with names, address, and telephone numbers,

3. a statement indicating that the resident meets the admission criteria,

4. description of presenting problems,

5. service plan and services provided, and referral arrangements as required by the program,

6. discharge date,

7. signature of person or persons, or designee providing services, and

8. crisis intervention and incident reports.

B. The program's consumer service plan shall offer and document as many life enhancement opportunities as are appropriate and reasonable.

C. Domestic Violence Shelter action plans shall include the following:

1. a review of danger and lethality with victim and discussion of the level of the victim's risk of safety.

2. a review of safety plan with the victim,

3. a review of the procedure for a protective order and referral to appropriate agency or clerk of the court authorized to issue the protective order, and

4. a review of supportive services to include, but not limited to medical, self sufficiency, day care, legal, financial, and housing assistance. The program shall facilitate connecting services to those resources as requested. Appropriate referrals shall be made, when indicated, and documented in the consumer record for victim treatment, psychiatric consultation, drug and alcohol treatment, or other allied services.

5. Domestic Violence Shelter staff completing action plans shall have at least a Bachelor's Degree in Behavioral Sciences.

R501-22-7. Physical Environment.

A. The program shall provide written documentation of compliance with the following:

1. local zoning ordinances,

2. local business license requirements,

3. local building codes,

4. local fire safety regulations,

5. local health codes, and

6. local approval from the appropriate government agency for new program services or increased consumer capacity.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for its consumers and staff.

R501-22-8. Physical Facility.

A. Live-in staff shall have separate living space with a private bathroom.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Space shall be provided for private and group counseling sessions.

D. Bathrooms

1. There shall be separate bathrooms, including a toilet, lavatory, tub or shower, for males and females. These shall be maintained in good operating order and in a clean and safe condition.

2. Consumer to bathroom ratios shall be 10 to one.

3. Bathrooms shall accommodate consumers with physical disabilities, as required.

4. Each bathroom shall be maintained in good operating order and be equipped with toilet paper, towels, and soap.

5. There shall be mirrors secured to the walls at convenient heights.

6. Bathrooms shall be placed as to allow access without disturbing other residents during sleeping hours.

7. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

8. Domestic Violence Shelters Bathrooms

a. family members may share bathrooms, and

b. where bathrooms are shared by more than one family or by children over the age of eight, parents or program staff shall ensure that privacy is protected.

E. Sleeping Accommodations

1. A minimum of 60 square feet per consumer shall be provided in a multiple occupant bedroom and 80 square feet in a single occupant bedroom. Storage space shall not be counted.

2. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

3. Each bed, none of which shall be portable, shall be solidly constructed and be provided with clean linens after each consumer stay and at least weekly.

4. Sleeping quarters serving male and female residents shall be structurally separated.

5. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.

6. For Domestic Violence Shelters, Family Support Centers and children's shelters, the following shall apply:

a. A minimum of 40 square feet per consumer shall be provided in a multiple occupant bedroom. Storage space shall not be counted. The use of one crib for children under two years of age shall not be counted in the square foot requirement as long as it does not inhibit access to and from the room.

b. Roll away and hide-a-beds may be used as long as the consumer square foot requirement is maintained.

c. Family members are allowed to share bedrooms. Where bedrooms are shared by more than one family, parents or program staff shall make appropriate arrangements to ensure privacy is protected.

F. Equipment

1. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.

2. All furniture and equipment shall be maintained in a clean and safe condition.

G. Storage

1. The program shall have locked storage for medications.

2. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

3. Any weapons brought into the facility shall be secured in a locked storage area or removed from the premises.

H. Laundry Service

1. Programs which permit consumers to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.

2. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

3. Laundry appliances shall be maintained in good operating order and in a clean and safe condition.

R501-22-9. Food Service.

A. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

B. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumer's service record information relating to special nutritional needs and provide for nutritional counseling where indicated.

C. The program shall establish and post kitchen rules and privileges according to consumer needs.

D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

E. Meals may be prepared at the facility or catered.

F. Kitchens shall have clean, safe operational equipment for the preparation, storage, serving, and clean up of all meals.

G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

H. When meals are prepared by consumers, there shall be a written policy to include the following:

1. rules of kitchen privileges,
2. menu planning and procedures,
3. nutritional and sanitation requirements, and
4. schedule of responsibilities.

R501-22-10. Specialized Services for Substance Abuse.

A. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma or unconscious.

B. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health requirements.

R501-22-11. Specialized Services for Programs Serving Children.

A. The program shall provide clean and safe age appropriate toys for children.

B. The program shall provide an outdoor play area enclosed with a five foot safety fence.

C. Only custodial parents, legal guardian, or persons designated in writing, are allowed to remove any child from the program.

D. The program shall provide adequate staff to supervise children at all times.

R501-22-12. Specialized Services for Domestic Violence

Shelters.

A. The program shall provide clean and safe age appropriate toys for children.

B. The program shall provide an outdoor play area enclosed with a five foot safety fence.

C. The program shall provide and document the following information both verbally and in writing to the consumer: Shelter rules, reason for termination, and confidentiality issues.

D. Parents are responsible for supervising their children while at the shelter. If parents are required to be away from the shelter or involved in shelter activities without their children, they shall arrange for appropriate child care services.

KEY: human services, licensing
May 2, 2000 62A-2-101 et seq.

R510. Human Services, Aging and Adult Services.
R510-302. Adult Protective Services.
R510-302-1. Authority and Purpose.

1.1 This rule is promulgated in accordance with the provisions of Section 62A-3-301, et seq. This purpose is to define services provided by the Office of Adult Protective Services in the Division of Aging and Adult Services, which may be provided to eligible clients.

1.2 Definitions:

A. "Abuse, neglect or exploitation" as defined in Section 62A-3-301, et seq.

B. "Adult Day Care" means providing daily care and supervision designed to meet the needs of functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a protective setting which allows for the maximum functioning of disabled adults.

C. "Adult Foster Care" means the provision of family-based care for disabled adults who are unable to live independently.

D. "Family Support" means the provision of services or payments to increase the capabilities of families to care for disabled or elder adults in the natural home setting.

E. "Office" means the Office of Adult Protective Services in the Division of Aging and Adult Services within the Department of Human Services.

F. "Protective Payee" means a person who is eligible for adult protective services, is having difficulty managing their own funds, and voluntarily requests assistance in managing those funds.

G. "Protective Supervision" means the provision of services to assist a disabled or elder adult to remain in a safe community setting through coordination with concerned agencies, families, or individuals, and may include such services as short-term counseling or crisis intervention.

1.3 Procedure, Services and Assistance:

A. Pursuant to Section 62A-3-301, et seq., this rule establishes the procedure by which the Division of Aging and Adult Services will operate the adult-protective-service program as authorized by law.

B. The Office of Adult Protective Services shall accept referrals from any person who has reason to believe that a disabled or elder adult (as defined in Section 62A-3-301) has been harmed or threatened with harm, including abuse, neglect or exploitation.

C. Adult Protective Services' aid and assistance is available, on a voluntary basis, to all eligible disabled or elder adults who are being or have been abused, neglected, or exploited, but shall be limited to the availability of budgetary resources being sufficiently allocated to the office.

D. The office of Adult Protective Services shall, through their intake system by telephone communication, accept referrals which are intended to enlist the office to provide the client with protection from abuse, neglect, or exploitation. Adult Protective Services may be accessed for and in behalf of any eligible citizen of the State.

E. In order for the office of Adult Protective Services to take action, those persons supplying appropriate referrals, shall include the following information:

1) The approximate age of the alleged victim. (Note: a victim must be 18 years of age, or older, to be eligible.)

2) A description or specific name of the disabling condition which the victim appears to have.

3) A statement of a specific allegation of abuse, neglect or exploitation being perpetrated or inflicted upon the victim.

F. The Office of Adult Protective Services shall make a record of each referral received. The office shall then evaluate each referral for possible follow-up and investigation. Some referrals may not be approved for further investigation if other relevant conditions are determined to be non existent.

G. Adult Protective Services investigations will be conducted on all screened and approved referrals. Under normal conditions, investigations will begin within 3 working days of receipt of the referral. Investigations will be completed within 60 days unless an extension waiver has been obtained.

H. To obtain an extension waiver:

1) The caseworker shall, with or without being requested by the client, submit a "Investigation Policy Waiver" form to the Supervisor for approval

2) The form shall document the reasons for the extension request, and how the extension will assist in protecting the client.

I. Eligible Adult Protective Services clients may receive emergency placements in a safe environment until a resolution of the immediate problem/crisis can be made.

J. Private homes used as emergency shelter homes must meet the same standards as Adult Foster Care providers. Facilities used as emergency shelter placements shall be either certified or licensed as a residential facility or have a current business license.

K. If the victim has lost or stands to lose a significant level of such activities as are involved in daily living, the protective service staff may determine that the victim is eligible to receive Adult Protective Supervision to assure that a reasonable amount of the activities of daily living are maintained. Nevertheless, the person receiving these services must be capable of voluntarily consenting to and accepting the services. If consent is withdrawn by the person, the services will cease unless a court order is obtained for such services to continue.

L. Eligible Adult Protective Services clients may receive Protective Payee services to assure that basic living needs are being met and money management skills are being learned at a level appropriate to the client's level of functioning. Protective payee services may be provided to clients who:

1) Have a protective need and a disabling condition which directly relates to the need for payee services, and are assessed by the worker to be incapable of handling their own funds.

2) Have no other person/institution to assume payee responsibility.

3) Are capable of consenting to the obtaining of services, and are then able to accept the services. (Note: If consent is withdrawn, the payee services will cease unless court ordered.)

4) Do not reside in a health care facility, residential treatment program, or other facility that is capable of providing payee services. Have an income which falls within the Adult Services income guidelines. The Client may be assessed a fee for services based on the Adult Protective Services Payment Schedule.

M. Eligible Adult Protective Services clients may receive an immediate payment of funds in emergency situations. These funds will be issued through an Over-the-Counter-Check and may be issued for such purposes as shelter, food, clothing, medicine or other emergencies which are needed immediately and cannot be funded from any other source. The worker is authorized to request that an agreement-for-repayment of the funds document be signed by the client, if appropriate.

N. Eligible Adult Protective Services clients may receive Adult Day Care to assist them in improving their ability to personally function and provide self-care. Adult Day Care may also be provided as respite for eligible caregivers. Clients may qualify for Adult Day Care if they require one or more of the following:

1) Assistance with activities of daily living.

2) 24 hour supervision.

3) Assistance due to significant loss of memory or cognitive function.

4) Assistance due to developmental disabilities.

5) Assistance in overcoming isolation related to their disability or to support the transition from independent living to group care or vice versa.

6) Assistance to prevent premature institutionalization.

O. Eligible Adult Protective Services clients may receive Adult Foster Care to enable them to remain in a community setting and prevent premature institutionalization. Individuals who are unable to live alone or whose mental, emotional and physical conditions are such that the care given by a foster care provider will meet the person's needs may be appropriate for adult foster care. Individuals with the following medical, mental and behavioral problems will not be normally considered appropriate for Adult Foster Care assistance:

1) Require medication which they are unable to manage and administer themselves.

2) Are considered by the Office to be a danger to themselves of others.

3) Are incontinent, unless they are capable of self care.

4) Are bedridden or confined to wheelchairs without having sufficient transfer skills from the wheelchair.

5) Have mental or neurological problems requiring professional supervision and treatment.

6) Require constant assistance with toileting, dressing, grooming, hygiene or bathing.

7) Exhibit destructive verbal and behavioral problems under normal living conditions.

8) Require supervision at night time due to wandering or agitated behavior.

P. Adult Foster Care services will only be provided in homes which are licensed in accordance with State standards.

Q. Eligible Adult Protective Services clients may receive Family Support payments to increase the capabilities of families to care for them in the natural home setting when no other services are available. These services are intended to help maintain the individual in a family member's home and prevent premature institutionalization. Disabled adult clients are eligible for this service when:

1) The client is unable to live unassisted due to mental, emotional and physical conditions and requires assistance or care in order to be able to remain safely in the community.

2) A Physician's statement indicates that the disabled adult is able to remain in his own home or the home of a relative and would benefit from Family Support Services.

3) The disabled adult meets income eligibility guidelines established by the Division.

R. The Office of Adult Protective Services may petition the courts for legal authority to intervene when it has determined that the disabled adult cannot be protected in any less restrictive manner and there is evidence that the disabled adult lacks the capacity to consent to services.

S. Services provided by Adult Protective Services will be terminated when:

1) the circumstances which directly or indirectly caused, or were primary reasons for the abuse, neglect or exploitation, no longer exist; and the disabled or elder adult is protected, or

2) when the disabled or elder adult receiving voluntary services requests that those services be terminated.

KEY: elderly, domestic violence, shelter care facilities, adult protective services
May 16, 2000 62A-3-301 et seq.
Notice of Continuation January 24, 2000

R527. Human Services, Recovery Services.
R527-67. Locate, Use of Subpoena Duces Tecum.
R527-67-1. Locate, Use of Subpoena Duces Tecum.

It is the policy of the Office of Recovery Services that a subpoena may be issued by the Office to obtain information about the location or earnings of an obligor if the information cannot be obtained without a subpoena.

The use of a subpoena for acquiring information from third parties shall be documented and shall be used only when other appropriate locate resources have been used unsuccessfully to locate the obligor.

KEY: child support, subpoena
1990 62A-11-304.1
Notice of Continuation May 3, 2000

R590. Insurance, Administration.

R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.

R590-153-1. Authority.

This rule is promulgated pursuant to Section 31A-2-201(3)(a), in which the Commissioner is empowered to make rules to implement the Insurance Code, and pursuant to the specific authority of Section 31A-23-302(8), which authorizes the Commissioner to define unfair methods of competition or any other unfair or deceptive act or practice in the business of insurance.

R590-153-2. Purpose.

The purpose of this rule is to identify certain practices which the commissioner finds provide unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition.

R590-153-3. Scope.

This Rule applies to all title insurers, title insurance agencies and title insurance agents and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R590-153-4. Definitions.

For the purpose of this Rule the commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

A. "Producer of title business" means any person engaged in a business, profession or occupation of:

(1) buying or selling interests in real property;

(2) making loans secured by interests in real property; and

(3) shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, sub-dividers, attorneys, consumers and the employees, agents, representatives, or solicitors of any of the foregoing.

B. "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

C. "Trade Association" means a recognized association of persons, a majority of whom are producers of title insurance business or persons whose primary activity involves real property.

D. "Business meals" shall include drinks and tips.

E. "Official Trade Association Publication" means:

(1) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(2) an annual, semi-annual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

R590-153-5. Unfair Methods of Competition, Acts and Practices.

The commissioner finds that providing or offering to provide any of the following benefits by parties identified in Section R590-153-3 to any producer of title insurance, either directly or indirectly, except as specifically allowed in Section R590-153-6 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition in the business of title insurance prohibited under Section 31A-23-302:

A. The furnishing of a commitment to provide title insurance without charge or at a charge discounted from an applicable rate filing. The prima facie cost of producing a commitment to insure shall be 60% of the minimum rate filed by the insurance company in the absence of a cost supported rate filing either higher or lower.

B. The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

C. Furnishing escrow services pursuant to Section 31A-23-307, for a charge less than the charge filed pursuant to Section 31A-19a-209(5) or the filing of charges for escrow services with the commissioner which are less than the actual cost of providing the services.

D. Waiving all or any part of established fees or charges for services which are not the subject of rates filed with the Commissioner.

E. Deferring or waiving any payment for insurance or services otherwise due and payable, including "holding for resale".

F. Furnishing services not reasonably related to a bona fide title insurance or escrow, settlement, or closing transaction. Examples (non exclusive): computer services, non-related delivery services, accounting assistance, legal counseling.

G. The paying for, furnishing, or waiving all or any part of the rent for space occupied by any producer of title insurance business.

H. Renting space from any producer of title business, regardless of the purpose, at a rate which is excessive when compared with rents for comparable space in the same geographic area, or paying rent based in whole or in part on the volume of business generated by any producer of title insurance business.

I. Furnishing all or any part of the time or productive effort of any employee of the title insurance organization or insurer (i.e., secretary, clerk, messenger, escrow officer etc.) to any producer of title insurance business.

J. Paying for all or any part of the salary of an employee of any producer of title insurance business.

K. Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time engaged as a real estate agent or broker or as a mortgage broker.

L. Paying for the fees or charges of a professional (e.g. an appraiser, surveyor, engineer, attorney, etc.) whose services are required by any producer of title insurance business to structure or complete a particular transaction.

M. Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity, except as allowed under Subsection R590-153-6(F) of a producer of title insurance business. Activities include,

but are not limited to: "open houses" at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

N. Sponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R590-153-6(C), or otherwise providing things of value for promotional activities of producers of title insurance business. Title agents or insurers may attend activities of producers if there is no additional cost to the agent or insurer other than their own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to producers of title insurance business or others attending the function.

O. Providing gifts or anything of value to a producer of title insurance business in connection with social events such as birthdays, job promotions, etc. except as provided in Subsection R590-153-6(H). A letter or card in these instances will not be interpreted as providing a thing of value.

P. Providing either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution. This does not preclude transactions with lending institutions which are in the normal course of business.

Q. Furnishing any part of a title agency's or insurer's facilities (e.g. conference rooms, meeting rooms, etc.) to a producer of title insurance business or trade association without receiving a fair rental charge comparable to other rental charges for facilities in the same geographic area.

R. Furnishing information packets, listing kits, "farm" packages or any other form of title evidence without first filing a specimen form copy with the commissioner and specifying a rate for which the form is available. The rate may not be less than the actual cost of producing the information and the material furnished.

S. Paying for any advertising on behalf of a producer of title insurance business.

T. Advertising jointly with a producer of title insurance business on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurance agency or company may advertise independently that it has provided title insurance for a particular subdivision, condominium project etc., but may not indicate that all future title insurance will be written by that agency or through that company.

U. A direct or indirect benefit provided to a producer of title insurance which is not specified in Section R590-153-6 below, will be investigated by the insurance department for the purpose of determining whether it should be defined by the commissioner as an unfair inducement under Section 31A-23-302(8).

R590-153-6. Permitted Advertising and Business Entertainment.

A. A title agency, agent or insurer may furnish without charge a copy of any existing plat map, and tax information covering a specific parcel of real estate, (Tax identification number, assessed owner, assessed value of land and improvements and the latest tax amount) without additions or addenda or attachments which may be construed as reaching conclusions of the agency, insurer or agent regarding matters of marketable ownership or encumbrances.

B. Advertisements by title agencies or companies must comply with the following:

(1) The advertisement must be purely self-promotional.

(2) Advertisements may not be placed in a publication, including an internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a producer or group of producers of title insurance business except as allowed under R590-153-6 (B)(3).

(3) Advertisements in official trade association publications are permissible as long as any agency or title insurer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

C. A title agency, insurer or agent may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

D. A title agency or insurer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, (including branch offices) (e.g. a Christmas party, an open house for remodeling of its facility, an open house for a new facility for the organization). The agency or insurer may not expend more than $10.00 per guest per open house. The open house may take place on or off the agency's or insurer's premises but may not take place on the producer's premises.

E. A title agency or insurer may distribute self-promotional items having a value of $3 or less to producers of title insurance business, consumers and members of the general public. These self-promotional items shall be novelty gifts which are nonedible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to producers of title insurance business or trade associations for redistribution by these entities.

F. A title agency or insurer may make expenditures for business meals or activities on behalf of any person, whether a producer of title insurance or not as a method of advertising if the expenditure meets all the following criteria:

(1) The agent representing the title agency or an employee of the insurer must be present during the business meal or activity.

(2) There is a substantial title insurance business discussion directly before, during or after the business meal or activity.

(3) The total cost of the business meal and the activity is not more than $75.00 per person, per day.

(4) No more than three individuals from an office of a producer of title insurance business may be provided a business meal or activity by an agency or insurer in a single day.

(5) The entire business meal or activity may take place on or off the agency's or insurer's premises, but may not take place on the producer's premises.

G. A title agency or insurer may conduct educational

programs under the following conditions:

(1) The educational program shall address only title insurance, escrow or topics directly related thereto.

(2) The educational program must be of at least one hour duration.

(3) For each hour of education $10 or less per person may be expended, including the cost of meals and refreshments.

(4) No more than one such educational program may be conducted at the office of a producer of title insurance business per calendar quarter.

H. A title agency or insurer may acknowledge a wedding, birth or adoption of a child, or funeral of a producer of title insurance business or members of his/her immediate family with flowers or gifts not to exceed $50.00.

I. Any other advertising and/or business entertainment must be requested in writing and approved in advance and in writing by the commissioner.

R590-153-7. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and/or any other penalties or measures as are determined by the commissioner in accordance with law.

R590-153-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
April 11, 2000 31A-2-201
Notice of Continuation December 15, 1997 31A-23-302

R590. Insurance, Administration.
R590-164. Uniform Health Billing Rule.
R590-164-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsection 31A-22-614.5.

R590-164-2. Purpose.

The purpose of this rule is to designate uniform claim forms, billing codes and compatible electronic data interchange accepted by health issuers.

R590-164-3. Applicability and Scope.

A. This rule applies to health claims and encounters.

B. Except as otherwise specifically provided, the requirements of this rule apply to issuers and providers.

C. This rule does not prohibit an issuer from requesting additional information required to determine eligibility of the claim under the terms of the policy or certificate issued to the claimant.

D. This rule does not prohibit an issuer, or provider from using alternative forms or procedures specified in a written contract between the provider and issuer.

E. This rule does not exempt a provider or issuer from data reporting requirements under state or federal law or regulation.

R590-164-4. Definitions.

As used in this rule:

A. Uniform Claim Forms are defined as:

(1) "UB-92 HCFA-1450" means the health insurance claim form maintained by HCFA for use by institutional care providers. Currently this form is known as the UB92.

(2) "Form HCFA-1500 (12-90)" means the health insurance claim form maintained by HCFA for use by health care providers.

(3) "American Dental Association, 1999 Version 2000" means the uniform dental claim form approved by the American Dental Association for use by dentists.

(4) "NCPDP" means the National Council for Prescription Drug Program's Claim Form or its electronic counterpart.

B. Uniform Claim Codes are defined as:

(1) "ASA Codes" means the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.

(2) "CDT-1 Codes" means the current dental terminology prescribed by the American Dental Association.

(3) "CPT-4 Codes" means the physicians current procedural terminology, fourth edition published by the American Medical Association.

(4) "HCPCS" means HCFA's Common Procedure Coding System, a coding system which describes products, supplies, procedures and health professional services and includes, the American Medical Associations (AMA's) Physician Current Procedural Terminology, Fourth Edition (CPT-4) codes, alphanumeric codes, and related modifiers. This includes:

(a) "HCPCS Level 1 Codes" which are the AMA's CPT-4 codes and modifiers for professional services and procedures.

(b) "HCPCS Level 2 Codes" which are national alphanumeric codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT-4.

(5) "ICD-9-CM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, Ninth revision, clinical modifications published by the U.S. Department of Health and Human Services.

(6) "NDC" means the National Drug Codes of the Food and Drug Administration.

(7) "UB92 Codes" means the code structure and instructions established for use by the National Uniform Billing Committee.

C. "Electronic Standard Format" means the ASCX12N standard format developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute using the implementation guides approved by the commissioner.

D. "Issuer" means an insurer or third party administrator that pays for, or reimburses for the costs of health care expense.

E. "Provider" means any person, partnership, association, corporation or other facility or institution that renders or causes to be rendered health care or professional services, and officers, employees or agents of any of the above acting in the course and scope of their employment.

F. "HCFA" means the Health Care Financing Administration of the U.S. Department of Health and Human Services.

R590-164-5. General Provisions.

A. Issuers shall accept and may require the applicable uniform claim forms completed with the uniform claim codes.

B. Issuers shall accept the applicable electronic data if transmitted in the electronic standard format. Issuers may reject electronic data if not transmitted in the electronic standard format.

R590-164-6. Separability.

If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

KEY: insurance law
July 1, 1995 31A-22-614.5
Notice of Continuation April 11, 2000

R616. Labor Commission, Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (1998).

1. Section I Rules for Construction of Power Boilers and the 1999 Addenda, published July 1, 1999.

2. Section IV Rules for Construction of Heating Boilers and the 1999 Addenda, published July 1, 1999.

3. Section VIII Rules for Construction of Pressure Vessels and the 1999 Addenda, published July 1, 1999.

B. Power Piping ASME B31.1 (1998) and the ASME B31.1a-1999 Addenda, issued November 30, 1999.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998.

D. National Board Inspection Code ANSI/NB-23 (1998) and the 1999 NBIC Addendum, published December 31, 1999.

E. Standard for the Prevention of Furnace Explosions/Implosions in Single Burner Boilers, NFPA 8501 (1997).

F. Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers, NFPA 8502 (1995).

G. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

H. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997) and the 1998 Addenda, published December 1998.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. The owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiences and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-2-10, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing

shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).

KEY: boilers*, certification, safety
May 9, 2000 34A-7-101 et seq.
Notice of Continuation February 5, 1997

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-105. Blaster Training, Examination and Certification.
R645-105-100. Introduction.

The rules in R645-105-100 present the requirements for blaster training, examination and certification at coal mining and reclamation operations. The Division is empowered to delegate, through contract or other means, the blaster training, examination, and certification program or any part thereof. The object of such delegation will be to minimize duplication of efforts of Utah agencies in certifying, licensing, or training mining personnel.

R645-105-200. Training.

210. To receive certification, a blaster will receive training from a program approved by the Division. Training may be provided by a permittee, industry, and/or the Division.

220. Training includes, but is not limited to, the technical aspects of blasting operations, and Utah and federal laws governing the storage, transportation, and use of explosives. Blasting courses will provide training and discuss practical applications of explosives.

230. Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives will receive direction and on-the-job training from a blaster.

240. Training will include course work in, and discuss the practical application of:

241. Explosives, including:

241.100. Selection of the type of explosive to be used;

241.200. Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

241.300. Handling, transportation, and storage;

242. Blast designs, including:

242.100. Geologic and topographic considerations;

242.200. Design of a blast hole, with critical dimensions;

242.300. Pattern design, field layout, and timing of blast holes; and

242.400. Field applications;

243. Loading blast holes, including priming and boostering;

244. Initiation systems and blasting machines;

245. Blasting vibrations, airblasts and flyrock, including:

245.100. Monitoring techniques; and

245.200. Methods to control adverse effects;

246. Secondary blasting applications;

247. Current federal and Utah rules applicable to the use of explosives;

248. Blast records; and

249. Schedules.

250. Training will also include course work in, and discuss the practical application of:

251. Preblasting surveys, including:

251.100. Availability;

251.200 Coverage; and

251.300. Use of in-blast design;

252. Blast-plan requirements;

253. Certification and training;

254. Signs, warning signals, and site control; and

255. Unpredictable hazards, including:

255.100. Lightning;

255.200. Stray currents;

255.300. Radio waves; and

255.400. Misfires.

R645-105-300. Examination.

310. Candidates for blaster certification will meet the following qualifications:

311. Have one year practical field experience involving blasting prior to taking the examination;

312. Take an approved blaster training course as required by R645-105-210; and

313. Pass the written examination;

320. Examination will be administered by the Division or its designee and will include, at a minimum, the topics set forth in R645-105-240 and R645-105-250.

R645-105-400. Certification.

410. Upon successful completion of the training and examination process identified in R645-105-200 and R645-105-300, the candidate for blasting certification will be awarded a certificate for three years from the date of issuance.

420. Blasting certificates may be renewed by attending a refresher course approved by the Division.

430. Refresher courses will review the topics identified in initial training in R645-105-200.

440. Suspension and revocation of certification.

441. The Division, when practicable, following written notice and opportunity for hearing and upon a Board finding of willful misconduct, will suspend or revoke the blaster's certification during the term of the certification or take other necessary action for any of the following reasons:

441.100. Noncompliance with any blasting-related order issued by the Board;

441.200. Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

441.300. Violation of any provision of Utah or federal explosives laws or regulations; or

441.400. Providing false information or a misrepresentation to obtain certification.

442. If advance notice and opportunity for a hearing cannot be provided, an opportunity for a hearing will be provided as soon as practical following the suspension, revocation, or other adverse action.

443. Upon notice of suspension or revocation of a blaster certificate, the blaster shall immediately surrender the revoked or suspended certificate to the Division.

450. Protection and Conditions of Certification.

451. Protection of Certification. Certified blasters will take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence will be reported immediately to the Division.

452. Conditions of Certification. In addition to the recertification described in R645-105-420, the following conditions for maintaining certification apply to all blasters:

452.100. A blaster will immediately exhibit, upon request, his or her certificate to any authorized representative of the Division and the Office;

452.200. Blasters' certificates will not be assigned or

transferred; and

452.300. Blasters will not delegate their responsibility to any individual who is not a certified blaster.

KEY: reclamation, coal mines
1990 40-10-1, et seq.
Notice of Continuation June 1, 2000

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-400. Inspection and Enforcement: Division Authority and Procedures.
R645-400-100. General Information on Authority and Procedures.

110. Right of Entry.

111. Within the State of Utah, Division representatives may enter upon and through any coal exploration or coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant will be required, except that the State may provide for its use with respect to entry into a building.

112. Division representatives may inspect any monitoring equipment or method of exploration or operation and have access to and may copy any records required under the approved State Program. Division representatives may exercise these rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant will be required, except that the State may provide for its use with respect to entry into a building.

120. Enforcement Authority. Nothing in the Federal Act or the State Program will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-10-20 and 40-10-22 of the Act.

130. Inspection Program.

131. The Division will conduct an average of at least one partial inspection per month of each active coal mining and reclamation operation under its jurisdiction, and will conduct a partial inspection of each inactive coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the State Program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under the State Program.

132. The Division will conduct an average of at least one complete inspection per calendar quarter of each active or inactive coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State Program, within the entire area disturbed or affected by the coal mining and reclamation operation. Abandoned sites may be inspected on a frequency as determined by the procedures set out in the definition of "abandoned sites" which is found in R645-100-200.

133. The Division will conduct inspections of coal explorations as are necessary to ensure compliance with the State Program.

134. Aerial Inspection.

134.100. Aerial inspections will be conducted in a manner which reasonably ensures the identification and documentation of conditions at each coal mining and reclamation operation inspected.

134.200. Any potential violation observed during an aerial inspection will be investigated on-site within three (3) days: provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 40-10-22(1)(b) of the Act will be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection will not be considered to be an additional partial or complete inspection for the purposes of R645-400-131 and R645-400-132.

135. The inspections required under R645-400-131 through R645-400-134 will:

135.100. Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

135.200. Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

135.300. Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State Program.

136. For the purposes of R645-400 an inactive coal mining and reclamation operation is one for which:

136.100. The Division has secured from the permittee the written notice provided for under R645-301-515.320; or

136.200. Reclamation Phase II as defined at R645-301-880.320 has been completed and the liability of the permittee has been reduced by the Division in accordance with the State Program.

140. Availability of Records.

141. The Division will make available to the Director of the Office, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

142. Copies of all records, reports, inspection materials, or information obtained by the Division will be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except:

142.100. As otherwise provided by federal law; and

142.200. For information not required to be made available under R645-203, R645-300-124 or R645-400-144.

143. The Division will ensure compliance with R645-400-142 by either:

143.100. Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur; or

143.200. At the Division's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur. Provided, that the Division will maintain for public inspection, at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

144. In order to protect preparation for hearings and enforcement proceedings, the Director of the Office and the Division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

150. Public Participation. The State Program provides for public participation in the enforcement of the State Program in R645-400-200, R645-400-300, R645-401, and the Board's Procedural Rules.

160. Compliance Conference.

161. Compliance conferences between a permittee and an authorized representative of the Division are provided for and described in R645-400-162 through R645-400-165.

162. A permittee may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-22 and R645-400-130, or any applicable permit or exploration approval.

163. The Division may accept or refuse any request to conduct a compliance conference under R645-400-162.

164. The authorized representative at any compliance conference will review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State Program or any applicable permit or exploration approval.

165. Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference will affect:

165.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

165.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R645-400-200. Information Related to Inspections.

210. Requests for Inspections.

211. A citizen may request a Division inspection under UCA 40-10-22 by furnishing to the Division a signed, written statement (or an oral report followed by a signed, written statement) giving the Division reason to believe that a violation of the State Program or any applicable permit or exploration approval has occurred, and including a phone number and address where the citizen can be contacted.

212. The identity of any person supplying information to the Division relating to a possible violation or imminent danger or harm will remain confidential with the Division if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Utah or federal law.

213. If a Division inspection is conducted as a result of information provided to the Division by a citizen as described in R645-400-211, the citizen will be notified as far in advance as practicable when the inspection is to occur and will be allowed to accompany the authorized representative of the Division during the inspection. Such person has a right of entry to, upon, and through the coal exploration or coal mining and reclamation operation about which he or she provided information, but only if he or she is in the presence of and is under control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant. All citizens so visiting mine sites are required to comply with applicable MSHA safety standards.

214. Within 10 days of the Division inspection or, if there is no inspection within 15 days of receipt of the citizen's written statement, the Division will send the citizen the following:

214.100. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Division inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

214.200. If no Division inspection was conducted, an explanation of the reason why; and

214.300. An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under R645-400-240.

215. The Division will give copies of all materials in R645-400-214 within the time limits specified in that Rule to the person alleged to be in violation, except that the name of the citizen will be removed unless disclosure of the citizen's identity is permitted under R645-400-212.

220. Right of Entry.

221. Each authorized representative of the Division conducting an inspection under R645-400 through R645-401:

221.100. Will have a right of entry to, upon, and through any coal exploration or coal mining and reclamation operation without advance notice or a search warrant, upon presentation of appropriate credentials;

221.200. May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under the State Program or any condition of an exploration approval or permit imposed under the State Program; and

221.300. Will have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

222. No search warrant will be required with respect to any activity under R645-400-221 except that a search warrant may be required for entry into a building.

230. Review of Adequacy and Completeness of Inspection. Any person who is or may be adversely affected by coal mining and reclamation operations or coal exploration operations may notify the Director in writing of any alleged failure on the part of the Division to make adequate and complete or periodic inspections as provided in R645-400-130 or R645-400-210. The notification will contain information to demonstrate the belief that the person is or may be adversely affected including the basis for his or her belief that the Division has failed to conduct the required inspections. The Director will within 15 days of receipt of the notification, determine whether there is sufficient information to create a reasonable belief that R645-400-130 or R645-400-210 are not being complied with, and if not, will immediately order an inspection to remedy the noncompliance. The Director will, also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

240. Review of Decision Not to Inspect or Enforce.

241. Any person who is or may be adversely affected by

coal exploration or coal mining and reclamation operations may ask the Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for State inspection under R645-400-210. The request for review will be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

242. The Director will conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation will also be given a copy of the results of the review, except that the name of the citizen will not be disclosed unless confidentiality has been waived or disclosure is required under Utah or federal law.

243. Informal review under this section will not affect any right to formal review or to a citizen's suit under the State Program.

R645-400-300. Provisions of State Enforcement.

310. Cessation Orders.

311. The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the State Program, or any condition of a permit or an exploration approval under the State Program, which:

311.100. Creates an imminent danger to the health or safety of the public; or

311.200. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

312. Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

313. If the cessation ordered under R645-400-311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.

314. When a notice of violation has been issued under R645-400-320 and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R645-400-314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

315. A cessation order issued under R645-400-311 or R645-400-314 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

315.100. The nature of the violation;

315.200. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

315.300. The time established for abatement, if appropriate, including the time for meeting any interim steps;

315.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies; and

315.500. The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

316. Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.

317. The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

318. The Division will terminate a cessation order by written notice to the permittee, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R645-401.

319. Within sixty days after issuing a cessation order, the Division will notify in writing any person who has been identified under R645-300-147 and R645-301-112.300 and 112.400 as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

320. Notices of Violation.

321. The Division will issue a notice of violation if, on the basis of a Division inspection carried out during the enforcement of a State Program it finds a violation of the State Program or any condition of a permit or an exploration approval imposed under the State Program which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310.

322. When on the basis of any Division inspection other than one described in R645-400-321, the Division determines that there exists a violation of the State Program or any condition of a permit or an exploration approval required by the Act or the cessation order must be issued under R645-400-310, the Division will issue a notice of violation to the permittee or his agent fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

323. A notice of violation issued under R645-400-320 will be in writing, signed by the authorized representative of the Division, and will set forth reasonable specificity:

323.100. The nature of the violation;

323.200. The remedial action required, which may include interim steps;

323.300. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

323.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to

which it applies.

324. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R645-400-327. An extended abatement date pursuant to this section will not be granted when the permittee's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

325. If the permittee fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R645-400-314.

326. The Division will terminate a notice of violation by written notice to the permittee, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Board to assess civil penalties for those violations under R645-401.

327. Circumstances which may qualify a coal mining and reclamation operation for an abatement period of more than 90 days are:

327.100. Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

327.200. Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

327.300. Where the permittee cannot abate within 90 days due to a labor strike;

327.400. Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

327.500. Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

328. Other information on abatement times extended beyond 90 days.

328.100. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

328.200. If any of the conditions in R645-400-327 exists, the permittee may request the authorized representative of the Division to grant an abatement period exceeding 90 days. The authorized representative will not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted will not exceed the shortest possible time necessary to abate the violation. The permittee will have the burden of establishing by clear and convincing proof that he or she is entitled to any extension under the provisions of R645-400-324 and R645-400-327.

328.300. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative will promptly and fully document in the file his or her reasons for granting or denying the request. The Director or designee of the Director specified in R645-400-328.200 will review this document before concurring in or disapproving the extended abatement date and will promptly and fully document the reasons for his or her concurrence or disapproval in the file.

328.400. Any determination made under R645-400-328.200 or R645-400-328.300 will contain a right of appeal to the Board under R645-400-360.

328.500. No extension granted under R645-400-328.200 or R645-400-328.300 may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of R645-400-328.200.

329. Enforcement actions at abandoned sites. The Division may refrain from using a notice of violation or cessation order for a violation at an abandoned site, as defined in R645-100-200., if abatement of the violation is required under any previously issued notice on order.

330. Suspension or Revocation of Permits.

331. The Board will issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the State Program should not be suspended or revoked, if the Board determines that a pattern of violations of any requirements of the State Program, or any permit condition required by the Act exists or has existed, and that each violation was caused by the permittee willfully or through an unwarranted failure to comply with those requirements or conditions. A finding of unwarranted failure to comply will be based upon a demonstration of greater than ordinary negligence on the part of the permittee. Violations by any person conducting coal mining and reclamation operations on behalf of the permittee will be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

332. Pattern of Violation.

332.100. The Director may determine that a pattern of violations exists or has existed, based upon two or more Division inspections of the permit area within a 12-month period, after considering the circumstances, including:

332.110. The number of violations, cited on more than one occasion, of the same or related requirements of the State Program or the permit; and

332.120. The number of violations, cited on more than one occasion, of different requirements of the State Program or the permit; and

332.130. The extent to which the violations were isolated departures from lawful conduct.

332.200. If after the review described in R645-400-332, the Director determines that a pattern of violation exists or has existed and that each violation was caused by the permittee willfully or through unwarranted failure to comply, he or she

will recommend that the Board issue an order to show cause as provided in R645-400-331.

332.300. The Director will promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the State Program, or the permit during three or more state inspections of the permit area within a 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she will recommend that the Board issue an order to show cause as provided in paragraph R645-400-331.

333. Number of Violations.

333.100. In determining the number of violations within a 12-month period, the Director will consider only violations issued as a result of a state inspection carried out during enforcement of the State Program.

333.200. The Director may not consider violations issued as a result of inspections other than those mentioned in R645-400-333.100 in determining whether to exercise his or her discretion under R645-400-332.100, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

334. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director will review the permittee's history of violations to determine whether a pattern of violations caused by the permittee's willful or unwarranted failure to comply exists pursuant to this section, and will make a recommendation to the Board concerning whether or not an order to show cause should issue pursuant to R645-400-331.

335. Hearing Procedures.

335.100. If the permittee files an answer to the show cause order and requests a hearing, a formal public hearing on the record will be conducted pursuant to the R641 Rules before the Board or at the Board's option by an administrative hearing officer. The hearing officer will be a person who meets minimum requirements for a hearing officer under Utah law. At such hearing the Division will have the burden of establishing a prima facie case for suspension or revocation of the permit based upon clear and convincing evidence. The ultimate burden of persuasion that the permit should not be suspended or revoked will rest with the permittee.

The Board or Officer will give 30 days written notice of the date, time and place of the hearing to the Director, the permittee and any intervenor. Upon receipt of the notice the Director will publish it, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operations, and will post it at the Division office closest to those operations. Upon written request by the permittee, such hearing may at the Board's option be held at or near the mine site within the county in which the permittee's operations are located.

335.200. Within 60 days after the hearing, the Board will prepare a written determination, or the Officer will prepare a written determination to the Board, as to whether or not a pattern of violation exists. If the determination is prepared by the hearing officer, it will be reviewed by the Board which will make the final decision thereon. If the Board finds a pattern of violations and revokes or suspends the permit and the permittee's right to mine under the State Program, the permittee will immediately cease coal mining operations on the permit area and will:

335.210. If the permit and the right to mine under the State Program are revoked, complete reclamation within the time specified in the order; or

335.220. If the permit and the right to mine under the State Program are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

340. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

341. A notice of violation or cessation order will be served on the permittee or his designated agent promptly after issuance, as follows:

341.100. By tendering a copy at the coal exploration or coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the permittee. Service will be complete upon tender of the notice or order and will not be deemed incomplete because of refusal to accept.

341.200. As an alternative to R645-400-341.100, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his designated agent. Service will be complete upon tender of the notice or order by mail and will not be deemed incomplete because of refusal to accept.

342. A show cause order may be served on the permittee in either manner provided in R645-400-341.

343. Designation by any person of an agent for service of notices and orders will be made in writing to the Division.

350. Informal Public Hearing.

351. Except as provided in R645-400-352 and R645-400-353 a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, will expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing will be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Division and the permittee. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division. Expiration of a notice or order will not affect the Board's right to assess civil penalties for the violations mentioned in the notice or order under R645-401.

352. A notice of violation or cessation order will not expire as provided in R645-400-351, if the condition, practice or violation in question has been abated or if the informal public hearing has been waived, or if, with the consent of the permittee, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of R645-400-352:

352.100. The informal public hearing will be deemed waived if the permittee:

352.110. Is informed, by written notice served in the manner provided in R645-400-352.200, that he or she will be

deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

352.120. Fails to request an informal public hearing within that time;

352.200. The written notice referred to in R645-400-352.110 will be delivered to the permittee by an authorized representative or sent by certified mail to the permittee no later than five days after the notice or order is served on the permittee; and

352.300. The permittee will be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

353. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

353.100. The permittee; and

353.200. Any person who filed a report which led to that notice or order.

354. The Division will also post notice of the hearing at the office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

355. An informal public hearing will be conducted by a representative of the Board who may accept oral or written arguments and any other relevant information from any person attending.

356. Within five days after the close of the informal public hearing, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to:

356.100. The permittee; and

356.200. Any person who filed a report which led to the notice or order.

357. The granting or waiver of an informal public hearing will not affect the right of any person to formal review under UCA 40-10-22-(3). At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing will be introduced as evidence or to impeach a witness.

360. Board Review of Citations.

361. Petition Process.

361.100. A permittee issued a notice of violation or cessation order under R645-400-320 or R645-400-310 or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of the Division's action by filing an application for review and request for hearing pursuant to UCA 40-10-22(3) and the Board's Rules within 30 days after receiving notice of the action.

361.200. Upon written petition by the operator or an interested party, the Board, at its discretion, or a hearing examiner appointed by the Board, pursuant to UCA 40-6-10(6), may be requested to hold a hearing at the site of the operation or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

361.300. The Board will issue an order concerning the cessation order within 30 days after its next regularly scheduled hearing of receipt of the petition for review of the Division's cessation order.

362. The filing of a petition for review and request for a hearing under R645-400-360 will not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

370. Inability to Comply.

371. No cessation order or notice of violation issued under R645-400-300 may be vacated because of inability to comply.

372. Inability to comply may not be considered in determining whether a pattern of violations exists.

373. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R645-401 and of the duration of the suspension of a permit under R645-400-330.

380. Compliance Conference.

381. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-22 or R645-400-100.

382. The Division may accept or refuse any request to conduct a compliance conference under R645-400-381. Where the Division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference will be given to the permittee.

383. The authorized representative at any compliance conference will review such proposed conditions and practices as the permittees may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act or of any applicable permit or exploration proposal.

384. Neither the holding of any compliance conference under R645-400-380 nor any opinion given by the authorized representative at such a conference will affect:

384.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

384.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

390. Injunctive Relief.

391. The Division may request the Utah Attorney General's office to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court for the district in which the coal exploration or coal mining and reclamation operation is located or in which the permittee has his principal office, whenever that permittee, in violation of the State Program or any condition of an exploration approval or permit:

391.100. Violates or fails or refuses to comply with any order or decision of the Division under the State Program;

391.200. Interferes with, hinders or delays the Division in carrying out the provisions of the State Program;

391.300. Refuses to admit the Division to a mine;

391.400. Refuses to permit inspection of a mine by the Division;

391.500. Refuses to furnish any required information or

report;

391.600. Refuses to permit access to or copying of any required records; or

391.700. Refuses to permit inspection of monitoring equipment.

392. No citizen suits may be brought pursuant to UCA 40-10-21 if the Board, Division or State Attorney General has commenced and is diligently prosecuting a civil action under R645-400-391, however, in any such action in a state court any interested person may intervene as permitted by and in accordance with Rule 24 of the Utah Rules of Civil Procedure.

KEY: reclamation, coal mines
October 1, 1999 40-10-1 et seq.
Notice of Continuation June 1, 2000

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Single Park Permit, Special Fun Tag, Heritage Park Pass, Five Day Pass, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Heritage Park Passes, Special Fun Tags, and Five Day Passes are not honored at This Is The Place State Park or the OHV center at Jordan River State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Heritage Park Pass, Special Fun Tag, and Five Day Pass, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities.

G. Fees for This Is The Place State Park and the OHV center at Jordan River State Park will be set by the contract operator with approval of the Division Director.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. Single Park Permit - Good for one park only.

a. $55.00 for the following parks:

TABLE 1

Anasazi	Antelope Island
Bear Lake/All Areas	Dead Horse Point
Deer Creek	East Canyon
Edge of the Cedars	Fremont
Hyrum	Iron Mission
Jordanelle	Palisade
Quail Creek	Rockport
Scofield	Snow Canyon
Starvation	Territorial Statehouse
Utah Fieldhouse of NH	Utah Lake
Willard Bay	Yuba

b. $45.00 for all other parks not listed as in a.

2. $65.00 Multiple Park Permit good for all parks.

3. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, 62 years and older or disabled, as defined by Special Fun Tag permit affidavit.

C. Daily Permits - Allows access to a specific state park on the date of purchase.

1. $6.00 per private motor vehicle or $4.00 per person for pedestrians or bicycles for the following parks:

TABLE 2

Dead Horse Point	Deer Creek
Jordanelle	Utah Lake
Willard Bay	

2. $5.00 per private motor vehicle or $3.00 per person for pedestrians or bicycles for the following parks:

TABLE 3

Anasazi	Antelope Island
Bear Lake/Rendevous	Bear Lake/Marina
East Canyon	Edge of the Cedars
Fremont	Hyrum
Iron Mission	Palisade
Quail Creek	Rockport
Scofield	Snow Canyon
Starvation	Territorial Statehouse
Utah Fieldhouse of NH	Yuba

3. $4.00 per private motor vehicle or $2.00 per person for pedestrians or bicycles for all parks not listed in 1 or 2 above.

4. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants.

D. Five Day Pass - $15.00 permits day use entrance to all state parks for five (5) consecutive days.

E. Group Site Day Use Fee - Advance reservation only. $1.00 per person, age six (6) and over, for sites with basic facilities. Minimum $25.00 fee established for each facility.

F. Educational Groups - No charge for group visits by Utah public or parochial schools with advance notice to park. When special arrangements or interpretive talks are provided, a fee of $.50 per person may be charged at the park manager's discretion.

G. Heritage Park Pass: $20.00 permits up to five (5) visits to any Heritage Park during the calendar year of issue for up to eight (8) people per private motor vehicle.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. $8.00 with pit or vault toilets; $10.00 with flush toilets; $12.00 with flush toilets and showers or electrical hookups; $14.00 with flush toilets, showers and electrical hookups; $16.00 with full hookups.

TABLE 4

Deer Creek	East Canyon

Fremont	Goblin Valley
Great Salt Lake	Green River
Gunlock	Huntington
Hyrum	Millsite
Minersville	Otter Creek
Piute	Quail Creek
Red Fleet	Scofield
Starvation	Steinaker
Wasatch Mountain	Willard Bay

2. $8.00 with pit or vault toilets; $11.00 with flush toilets; $13.00 with flush toilets and showers or electrical hookups; $15.00 with flush toilets, showers, and electrical hookups; $17.00 with full hookups.

TABLE 5

Antelope Island	Coral Pink Sand Dunes
Escalante	Kodachrome
Palisade	Rockport
Snow Canyon	Utah Lake
Yuba	

3. $8.00 with pit or vault toilets; $13.00 with flush toilets; $15.00 with flush toilets and showers or electrical hookups; $17.00 with flush toilets, showers and electrical hookups; $19.00 with full hookups.

TABLE 6

Bear Lake	Dead Horse Point
Jordanelle	

4. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

5. $5.00 per additional vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that camp unit. No more than one (1) additional vehicle is allowed at any individual camping site.

6. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

B. Group Sites - By advance reservation for groups

1. $1.00 per person, age six (6) and over at sites with vault toilets. Minimum $25.00 fee for each facility.

2. $2.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum $50.00 fee for each facility, except Dead Horse Point with a minimum of $25.00.

R651-611-4. Special Fees.

A. Golf Course Fees

1. Jordan River rental and green fees

a. Nine holes general public - weekends and holidays - summer - $6.50

b. Nine holes weekdays (except holidays) - summer - $5.50

c. Nine holes Jr/Sr weekdays (except holidays)- - summer) - $4.50

d. Nine holes general public (winter) - $4.50

e. Nine holes Jr/Sr (winter) - $3.50

f. All day rate weekdays (winter) - $8.00

g. All day rate weekends and holidays (winter) - $10.00

h. 20 round card pass - $75.00

i. Promotional pass weekdays (except holidays) - $250.00

j. Companion fee - adult - $2.00

k. Companion fee - child - $1.00

l. Motorized cart (9 holes) - Prohibited

m. Pull carts (9 holes) - $1.00

n. Club rental - $3.00

o. Summer season is April through October and the winter season is November through March.

2. Palisade rental and green fees.

a. Nine holes general public - weekends and holidays - $10.00

b. Nine holes weekdays (except holidays) - $9.00

c. Nine holes Jr/Sr weekdays (except holidays) $8.00

d. 20 round card pass - $140.00

e. 20 round card pass (Jr only)- $100.00

f. Promotional pass - single person (any day) - $400.00

g. Promotional pass - single person (weekdays only) - $275.00

h. Promotional pass - couples (any day) - $650.00

i. Promotional pass - family (any day) - $850.00

j. Companion fee - walking, non -player - $4.00

k. Motorized cart (9 holes) - $8.00

l. Motorized cart (9 holes single rider) - $4.00

m. Pull carts (9 holes) - $2.00

n. Club rental (9 holes) - $5.00

o. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

p. Driving range - small bucket - $2.50

q. Driving range - large bucket - $3.50

3. Wasatch Mountain rental and green fees.

a. Nine holes general public - $10.00

b. Nine holes general public (weekends and holidays)- $11.00

c. Nine holes Jr/Sr weekdays (except holidays) - $9.00

d. 20 round card pass - $180.00 - no holidays or weekends

e. Companion fee - walking, non-player - $4.00

f. Motorized cart (9 holes - mandatory on Mt. course) - $10.00

g. Motorized cart (9 holes single rider - $5.00)

h. Pull carts (9 holes) - $2.25

i. Club rental (9 holes) - $6.00

j. School teams - No fee for practice rounds with coach and team roster (Wasatch Co. only).

Tournaments are $3.00 per player.

k. Tournament fee (per player) - $2.00

l. Driving range - small bucket - $2.25

m. Driving range - large bucket - $4.50

4. Green River rental and green fees.

a. Nine holes general public - $9.00

b. Nine holes Jr/Sr weekdays (except holidays) - $8.00

c. Eighteen holes general public - $16.00

d. 20 round card pass - $130.00

e. Promotional pass - single person (any day) - $325.00

f. Promotional pass - single person (Jr/Sr weekdays) - $275.00

g. Promotional pass - couple (any day) - $600.00

h. Promotional pass - family (any day) - $750.00

i. Companion fee - walking, non-player - $4.00
j. Motorized cart (9 holes) - $8.00
k. Motorized cart (9 holes single rider) - $4.00
l. Pull carts (9 holes) - $2.25
m. Club rental (9 holes) - $5.00
n. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.
5. Golf course hours are daylight to dark
6. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.
7. Jr golfers are 17 years and under. Sr golfers are 62 and older.
B. Boat Mooring and Dry Storage
1. Mooring Fees:
a. Day Use - $5.00
b. Overnight Boat Parking - $7.00 until 8:00 a.m.
c. Overnight Boat Camping - $10.00 until 2:00 p.m.
d. Monthly - $4.00/ft.
e. Monthly with Utilities - (Bear Lake) $5.00/ft.
f. Monthly with Utilities - (Other Parks) $4.50/ft.
g. Monthly Off Season - $2.00/ft
h. Monthly (Off Season with utilities) - $2.50/ft
2. Dry Storage Fees:
a. Overnight (until 2:00 p.m.) - $5.00
b. Monthly During Season - $40.00
c. Off Season - $20.00
C. Meeting Rooms and Buildings
1. Day Use: 1-4 hours between 8:00 a.m. and 6:00 p.m.
a. Up to 50 persons - $50.00
b. 51 to 100 persons - $70.00
c. 101 to 150 persons - $90.00
d. Add 50% for after 6:00 p.m.
e. Fees include day use fee
2. Overnight Use 2:00 p.m. until 2:00 p.m., up to 100 people.
a. Monday through Thursday - $100.00
b. Friday through Sunday and Holidays - $150.00
c. November through March - Add 10%
D. Ice and Roller Skating Fees

TABLE 7

Public Hours	Territorial Two Hour Sessions	Utah Lake Two Hour Sessions
1. Adults	$2.00	$4.00
2. Children 6 through 11	$1.00	$3.00
3. Skate Rental	$1.00	$1.00
4. Ice Skate Sharpening		$3.00
5. Group Reservations	$30.00/hour	$100.00/hour

E. Other Miscellaneous Fees
1. Canoe Rental (includes safety equipment).
a. Up to one (1) hour - $ 5.00
b. Up to four (4) hours - $10.00
c. All day to 6:00 p.m. $20.00
2. Paddleboat Rental (includes safety equipment).
a. Up to one (1) hour $10.00
b. Up to four (4) hours $20.00
c. All day to 6:00 p.m. $30.00
3. Cross Country Skiing Trails.
a. $4.00 per person, twelve (12) and older.
b. $2.00 per person, six (6) through eleven (11).
4. Pavilion - 8:00 a.m. - 10:00 p.m. (non -fee areas).
a. $10.00 per day - (single unit).
b. $30.00 per day - (group unit).
5. Recreation Field (non-fee areas) - $25.00.
6. Sports Equipment Rental - $10.00.
7. Day Use Shower Fee - $2.00.
(where facilities can accommodate)
8. Cemetery Fees.
a. $150.00 Veteran or as allowed by Veterans Administration
b. $400.00 Spouse or dependent child (under 18 or handicapped).
c. $200.00 Extra for Saturday burials.
d. $250.00 Extra for Sunday or holiday burials.
e. $200.00 Cleaning deposit for all non-funeral functions.
f. $100.00 Two hour chapel use for funerals.
g. $125.00 Two hour chapel use (non-funeral).
h. $50.00 additional charge for chapel use on Saturday, Sunday and holidays.
i. $300.00 Casket disinterments.
j. $150 Cremation disinterments.
9. Application Fees - Non -refundable PLUS Negotiated Costs.
a. Grazing Permit - $20.00
b. Easement - $50.00
c. Construction/Maintenance - $50.00
d. Special Use Permit - $50.00
e. Commercial Filming - $50.00
f. Waiting List - $10.00
10. Assessment and Assignment Fees.
a. Duplicate Document - $10.00
b. Contract Assignment - $20.00
c. Returned checks - $20.00
d. Staff time - $40.00/hour
e. Equipment - $30.00/hour
f. Vehicle - $20.00/hour
g. Researcher - $5.00/hour
h. Photo copy - $ .10/each
i. Fee collection - $10.00
11. Curation Fees.
a. Annual curation agreement $50.00
b. Curation storage Edge of Cedars $400.00/cubic foot.
c. Curation storage other parks $250.00/cubic foot
d. All curation storage fees are one time only.
12. Snowmobile Parking Fee - Monte Cristo Trailhead.
a. Day use (6:00 a.m. to 10:00 p.m.) - $3.00
b. Overnight (10:00 p.m. to 10:00 p.m.) - $5.00
c. Season Pass (Day use only) - $30.00
d. Season Pass (Overnight) - $50.00

R651-611-5. Reservations.
A. Reservation Fees.
1. Individual reservations $6.25
2. Group reservations $10.25
3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.
B. All park facilities will be allocated on a first-come, first-serve basis.
C. Selected camp and group sites are reservable in advance

by calling 322-3770 or 1-800-322-3770.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. A cleanup deposit may be required by the park manager for any group reservation or special use permit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. No weekend tournaments at Wasatch Mountain. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. No park facilities will be reserved by one party for more than 14 consecutive days in any 30-day period, with the exception of Snow Canyon State Park which can be reserved by one party for no more than five (5) consecutive days in any 30-day period.

KEY: parks, fees
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Notice of Continuation February 10, 1997

R652. Natural Resources; Forestry, Fire and State Lands.
R652-40. Easements.
R652-40-100. Authority.

This rule implements Section 65A-7-8 which authorizes the Division of Forestry, Fire and State Lands to establish rules for the issuance of easements on, through, and over any sovereign land, and to establish price schedules for this use.

R652-40-200. Easements Issued on Sovereign Lands.

1. The division may issue exclusive or non-exclusive easements on sovereign lands when the division deems it consistent with management objectives.

2. A conservation easement may be issued upon satisfaction of the sovereign land management objectives described under Section 65A-1-2 and R652-2.

R652-40-300. Easements Acquired by Application.

1. Easements across sovereign lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto. No easement or other interest in sovereign lands may be acquired by prescription, by adverse possession, nor by any other legal doctrine except as provided by statute. All applications shall be made on division forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Pursuant to Section 72-5-203, applications shall be accepted for easements for roads in existence prior to January 1, 1992 for which easements were not in effect on that date. Easements issued under this section shall be subject to all applicable provisions of R652-40.

R652-40-400. Easement Charges.

1. The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R652-40-600.

2. The charge for easements issued to a subdivision of the state pursuant to R652-40-300(2) shall be subtracted from the aggregate pool of value collected from sovereign land receipts and other sources allocated for this purpose by the legislature pursuant to statute. Payments may be made over time.

3. The division may, when issuing easements pursuant to R652-40-300(2), also accept payment from sources other than the aggregate pool and may credit the value of benefits accruing to beneficiaries from continued maintenance of the easement and the value of access against accrued interest.

R652-40-500. Surveys.

Anyone desiring to perform a survey on sovereign land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the division written notice of intent to conduct a survey of the proposed location of the easement. The notice, which may be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements. The notice shall contain an agreement to indemnify and hold the division harmless and any authorized lessees of the state of Utah harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director. The written notice shall be reviewed by the division. The division may require the applicant to obtain a right-of-entry agreement.

R652-40-600. Minimum Charges for Easements.

The division may establish price schedules for easements based on the cost incurred by the division in administering the easement and the fair-market value of the particular use.

R652-40-700. Application Procedures.

1. Time of Filing. Applications for an easement shall be received for filing in the office of the division during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, shall be immediately stamped with the exact date of filing.

2. Non-refundable Application Fees and Advertising Deposit. All applications shall be accompanied with a non-refundable application fee as specified in R652-4 and a deposit to cover applicable advertising costs. After review of the application, the division shall notify the applicant of the charges pursuant to R652-40-600. Failure to pay the charges within 60 days of mailing of notification shall cause the denial of the application.

3. Refunds and Withdrawals

(a) If an application for an easement is rejected, all monies tendered by the applicant, except the application fee, shall be refunded.

(b) Should an applicant desire to withdraw the application, the applicant shall make a written request. If the request is received prior to the time that the application is approved, all monies tendered by the applicant, except the application fee, shall be refunded. If the request for withdrawal is received after the application is approved, all monies tendered shall be forfeited to the division, unless otherwise ordered by the director for a good cause shown.

4. Application Review

(a) Upon receipt of an application, the division shall review the application for completeness. Applicants submitting incomplete applications shall be provided written notice of incompleteness and shall be allowed 60 days to cure the deficiency. Incomplete applications not remedied within the 60-day period may be denied.

(b) Application approval by the director constitutes acceptance of the applicant's offer.

(c) The easement shall be executed by the applicant and returned to the division within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the division within the 60-day period may result in cancellation of the conveyance and the discharge of any obligation of the division arising from the approval of the application.

R652-40-800. Term of Easements.

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the beneficiaries.

R652-40-900. Conveyance Documents.

1. Each easement shall contain provisions necessary to ensure responsible surface management, including the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the state from liability from all actions of the grantee.

2. In addition to the requirements of R652-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

R652-40-1000. Bonding Provisions.

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days' written notice, the applicant or grantee, as the case may be, may be required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the division may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the division:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the state will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "Utah Division of Forestry, Fire and State Lands and Grantee, c/o Grantee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the division, the grantee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the grantee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the division.

R652-40-1100. Conflict of Use.

The division reserves the right to issue non-exclusive easements or other leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements when compatible with the original grant.

R652-40-1200. Amendments.

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R652-4 must accompany the amendment request.

R652-40-1210. Easement Conversion.

Easements issued for uses or purposes which would more appropriately be authorized by a special use lease shall be converted, whenever possible, to a special use lease. Any application for the conversion of an easement to a special use lease must follow the process outlined in R652-30-500(2)(g).

R652-40-1300. Renewal of Easement.

Prior to the expiration date of any easement heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

R652-40-1400. Removal of Sand and Gravel.

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

R652-40-1500. Removal of Trees.

In the event the easement crosses forested sovereign land, no trees may be cut or removed unless and until a small forest product permit or a timber contract as provided for in division rules has been obtained.

R652-40-1600. Easement Assignments.

1. An easement may be assigned to any person, firm, association, or corporation qualified under R652-3-200, provided that:

(a) the assignment is approved by the division;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) the assignor agrees to pay the difference between what was originally paid for the easement and what the division would charge for the easement at the time the application for assignment is submitted.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any

conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to division procedures.

5. An assignment is not effective until approval is given by the division. Any assignment made without such approval is void.

R652-40-1700. Termination of Easement.

Any easement granted by the division across sovereign land may be terminated in whole or in part for failure to comply with any term or conditions of the conveyance document or applicable laws or rules. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

R652-40-1800. Abandonment.

In order to facilitate the determination of an abandonment of easement, the grantee shall pay an administrative fee every three years during the term of the easement as provided in R652-4. This fee shall not be construed as rent. In lieu of this fee, the division may allow a grantee to pay to the division a one-time negotiated fee.

KEY: natural resources, management, surveys, administrative procedure
1993 65A-7-8
Notice of Continuation April 11, 1997

R652. Natural Resources; Forestry, Fire and State Lands.
R652-120. Wildland Fire.
R652-120-100. Authority.

This rule implements Article XVIII of the Utah Constitution and provides for the issuance of burning permits, the establishment of limited suppression areas, and conduct of prescribed burns under the authority of Sections 65A-8-1 and 65A-8-9.

R652-120-200. Burning Permits.

1. Burning permits shall be issued only by the following authorized officials: state forester, his staff, and persons designated by the state forester. Burning permits are required for open fires during the closed fire season as specified in Section 65A-8-9 and during any extension of the closed fire season proclaimed by the state forester.

2. The permit form, provided by the state forester, shall be filled out completely and in accordance with instructions determined and furnished by his office.

3. Permittees shall comply with any written restrictions or conditions imposed with the granting of the permit.

4. The permittee shall sign the permit form.

5. Burning permits will be issued only when in compliance with the Utah Air Conservation Regulations. The following requirements must be met with each burning permit issued:

(a) The permit is not valid and operative unless the Clearing Index is 500 or above. The clearing index is determined daily by the U.S. Weather Bureau and available from county health offices, the State Forester's Office or Area Offices of the Utah State Department of Health.

(b) A permit may be extended one day at a time, without inspection upon request to the issuing officer. The request must be made before the expiration of the permit.

6. Agriculture has a limited exemption to open burning restrictions for the Division of Forestry, Fire and State Lands rules as indicated in Section 65A-8-9 and the Utah Air Conservation Regulations as outlined in Section 19-2-114.

7. Burning permits shall not be issued when red flag conditions exist or are forecasted by the National Weather Service. Every permittee is required to contact the National Weather Service to assure that a red flag condition does not exist or is not forecasted. Permits are not valid or operative during declared red flag conditions.

R652-120-300. Limited Suppression Areas.

1. The division may establish fire management areas where the level and degree of suppression activities are to be commensurate with the value of the resources within the fire management area.

2. Fire management plans shall be available for public review and comment prior to implementation.

3. County commission approval is required for any fire management plan that provides for limited fire suppression action on private lands within a fire management area.

R652-120-400. Prescribed Fire.

1. All prescribed burns utilizing division assistance other than permitting must have a written burn plan that has been reviewed and approved by the division. Burn plans shall include at a minimum information to determine management objectives and procedures to attain the objectives. Data will be provided to deal with safety concerns and smoke management. The burn plan will detail needs to insure the prescribed burn occurs within prescription.

2. A private landowner or state lessee/permittee receiving assistance on a prescribed fire shall supply resources specified in the burn plan.

3. Fire-fighting equipment placed by the division in any county for fire protection purposes cannot be required to assist or be fully committed to a prescribed fire, but may be utilized as available.

R652-120-500. Management for Cultural Resources and Threatened and Endangered Species.

Cultural resources, paleontological resources, and threatened and endangered species which may be affected by a proposed prescribed fire or within a fire management plan will be considered, protected or mitigated, as may be required and practical.

KEY: administrative procedure, burns, permits, endangered species
1989 65A-8-1
Notice of Continuation May 9, 2000 65A-8-9

R657. Natural Resources, Wildlife Resources.
R657-15. Closure of Gunnison, Cub and Hat Islands.
R657-15-1. Purpose and Authority.

Under authority of Section 23-21a-3, this rule provides for the management of Gunnison, Cub, and Hat islands for the protection and perpetuation of the American white pelican, Pelecanus erythrorhynchos.

R657-15-2. Closed Areas.

(1) The following areas are closed to air, water, and land trespass as a conservation measure to protect colonial bird nesting areas:

(a) Gunnison and Cub islands, located in Sections 9, 10, 15 and 16, Township 7 North, Range 9 West, Salt Lake Base and Meridian; and

(b) Hat Island, located in Section 24, Township 4 North, Range 7 West, Salt Lake Base and Meridian.

(2) This closure encompasses all of Gunnison, Cub, and Hat islands and surrounding waters of the Great Salt Lake one mile in every direction from the shoreline of Gunnison, Cub, and Hat islands.

KEY: wildlife, birds, conservation, wildlife management
1990 23-21a-3
Notice of Continuation May 22, 2000

R657. Natural Resources, Wildlife Resources.
R657-19. Taking Nongame Mammals.
R657-19-1. Purpose and Authority.

(1) Under authority of Sections 23-13-3, 23-14-18 and 23-14-19, this rule provides the standards and requirements for taking and possessing nongame mammals.

(2) A person taking any live nongame mammal for a personal, scientific, educational, or commercial use must comply with R657-3 Collection, Importation, Transportation and Subsequent Possession of Zoological Animals.

R657-19-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Noncontrolled species" means a species or subspecies of zoological animal that poses a minimal threat of disease or ecological, environmental, or human health or safety risk.

(b) "Nongame mammal" means:

(i) any species of bats;

(ii) any species of mice, rats, or voles of the families Heteromyidae, Cricetidae, or Zapodidae;

(iii) opossum of the family Didelphidae;

(iv) pikas of the family Ochotonidae;

(v) porcupine of the family Erethizontidae ;

(vi) shrews of the family Soricidae; and

(vii) squirrels, prairie dogs, and marmots of the family Sciuridae.

R657-19-3. General Provisions.

(1) A person may not purchase or sell any nongame mammal or it's parts.

(2) A certificate of registration must be obtained prior to taking any species designated in Subsection R657-19-4 as prohibited or any species listed in Rule R657-3-24 as prohibited or controlled.

(3) Section 23-20-8 does not apply to the taking of noncontrolled species covered under this rule.

R657-19-4. Controlled Species.

(1) A certificate of registration is required to take any of the following species of nongame mammals:

(a) bats of any species; and

(b) pika - Ochotona princeps.

(2) A certificate of registration is required to take any shrew - Soricidae, all species.

(3) A certificate of registration is required to take a Utah prairie dog, Cynomys parvidens, in Beaver, Garfield, Iron, Kane, Millard, Piute, Sanpete, Sevier, Washington, and Wayne counties.

(4) A certificate of registration is required to take any of the following species of nongame mammals in Washington County:

(a) cactus mouse - Peromyscus eremicus;

(b) kangaroo rats - Dipodomys, all species;

(c) Southern grasshopper mouse - Onychomys torridus; and

(d) Virgin River montane vole - Microtus montanus rivularis, which occurs along stream-side riparian corridors of the Virgin River.

(5) A certificate of registration is required to take any of the following species of nongame mammals in San Juan and Grand counties:

(a) Abert squirrel - Sciurus aberti;

(b) Northern rock mouse - Peromyscus nasutus; and

(c) spotted ground squirrel - Spermophilus spilosoma.

(6) A certificate of registration is not required to take any of the following species of nongame mammals:

(a) White-tailed prairie dog, Cynomys leucurus; and

(b) Gunnison prairie dog, Cynomys gunnisoni.

R657-19-5. Noncontrolled Species.

All nongame mammal species not designated as controlled species in R657-19-4, are designated as noncontrolled species and may be taken as follows:

(1) A license is not required to take any species of nongame mammals designated as noncontrolled;

(2) Species of nongame mammals designated as noncontrolled may be taken year-round, 24-hours-a-day.

(3) There are no bag or possession limits for species of nongame mammals designated as noncontrolled.

R657-19-6. Utah Prairie Dog Provisions.

(1)(a) A person may not take a Utah Prairie dog, Cynomys parvidens, without first obtaining a certificate of registration.

(b) A certificate of registration for taking Utah prairie dogs may be issued as provided in Subsection (i) or Subsection (ii), if the taking will not further endanger the existence of the species:

(i) in cases where Utah Prairie dogs are causing damage to agricultural lands as provided in the rules of the U.S. Fish and Wildlife Service; or

(ii) as provided in a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service under an approved Habitat Conservation Plan.

(c) A person may apply for a certificate of registration at the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84720.

(d) After review of the application, a certificate of registration may be issued.

(2)(a) A person may take Utah prairie dogs with a firearm during daylight hours or by trapping as specified on the certificate of registration.

(b) A person may not use any chemical toxicant to take Utah prairie dogs.

(c) In addition to the requirements of this rule, any person taking Utah prairie dogs must comply with local ordinances and laws.

R657-19-7. Areas Open to Taking Utah Prairie Dogs -- Dates Open --Limits on Number of Utah Prairie Dogs Taken.

(1) A person who obtains a valid certificate of registration may take Utah prairie dogs only on private lands within the following counties:

(a) Beaver;

(b) Garfield;

(c) Iron;

(d) Kane;

(e) Millard;

(f) Piute;
(g) Sanpete;
(h) Sevier;
(i) Washington; and
(j) Wayne.

(2) Taking of a Utah prairie dog on any land or by any method, other than as provided in the valid certificate of registration, including any public land, is a violation of state and federal law.

(3) A landowner, lessee, or employee on a regular payroll and not hired specifically to take Utah prairie dogs, and who is specifically named on a valid certificate of registration, may remove Utah prairie dogs, as provided in the certificate of registration.

(4) The taking of any Utah prairie dog outside the areas provided in this section is prohibited, except by division employees while acting in the performance of their assigned duties.

(5) The taking of Utah prairie dogs is limited to the dates designated on the certificate of registration. All dates are confined to June 1 through December 31.

(6)(a) A person may take only the total number of Utah prairie dogs designated in the certificate of registration.

(b) The total range-wide take of Utah prairie dogs causing agricultural damage is limited to no more than 6,000 Utah prairie dogs annually.

(c) If the division determines that taking Utah prairie dogs has an adverse effect on conservation of the species, taking shall be further restricted or prohibited.

R657-19-8. Monthly Reports of Take of Utah Prairie Dogs.

The following information must be reported to the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84720, every 30 days:

(1) the name and address of the certificate of registration holder;

(2) the person's certificate of registration number; and

(3) the location, method of take, and method of disposal of each Utah prairie dog taken during the 30-day period.

R657-19-9. Unlawful Possession of Utah Prairie Dogs.

A person may not possess a Utah prairie dog or its parts, without first obtaining a valid certificate of registration and a federal permit.

R657-19-10. White-tailed and Gunnison Prairie Dogs.

(1)(a) A license or certificate of registration is not required to take either white-tailed or Gunnison prairie dogs.

(b) There are no bag limits for white-tailed or Gunnison prairie dogs for which there is an open season.

(2) White-tailed prairie dogs, Cynomys leucurus, may be taken:

(a) in the following counties at any time:
(i) Carbon County;
(ii) Daggett County;
(iii) Duchesne County;
(iv) Emery County;
(v) Summit County;
(vi) Uintah County, except in the closed area as provided in Subsection (2)(b)(i); and
(vii) all areas west and north of the Colorado River in Grand and San Juan counties.

(b) White-tailed prairie dogs, Cynomys leucurus, may not be taken in the following closed area in order to protect the reintroduced population of black-footed ferrets, Mustela nigripes:

(i) Boundary begins at the Utah/Colorado state line and Uintah County Road 403, also known as Stanton Road, northeast of Bonanza; southwest along this road to SR 45 at Bonanza; north along this highway to Uintah County Road 328, also known as Old Bonanza Highway; north along this road to Raven Ridge, just south of US 40; southeast along Raven Ridge to the Utah/Colorado state line; south along this state line to point of beginning.

(3)(a) The taking of Gunnison prairie dogs, Cynomys gunnisoni, is prohibited in all areas south and east of the Colorado River, and north of the Navajo Nation in Grand and San Juan counties from April 1 through June 15.

(b) Gunnison prairie dogs may be taken in the area provided in Subsection (3)(a) from June 16 through March 31.

(c) Gunnison prairie dogs causing agricultural damage or creating a nuisance on private land may be taken at any time, including during the closed season from April 1 through June 15.

R657-19-11. Violation.

(1) Any violation of this rule is a Class C misdemeanor as provided in Section 23-13-11(2).

(2) In addition to this rule any animal designated as a threatened or endangered species is governed by the Endangered Species Act and the unlawful taking of these species may also be a violation of federal law and rules promulgated thereunder.

KEY: wildlife, game laws

May 17, 2000	**23-13-3**
Notice of Continuation March 30, 2000	**23-14-18**
	23-14-19

R657. Natural Resources, Wildlife Resources.

R657-21. Cooperative Wildlife Management Units for Small Game and Waterfowl.

R657-21-1. Purpose and Authority.

Under authority of Section 23-23-3, this rule provides the procedures, standards, and requirements for Cooperative Wildlife Management Units for the hunting of small game and waterfowl.

R657-21-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "Small game" means, for purposes of this rule only, band-tailed pigeon, cottontail rabbit, grouse, mourning dove, partridge, pheasant, ptarmigan, quail, snowshoe hare, and wild turkey.

R657-21-3. Operation by Landowner Association.

(1)(a) Cooperative Wildlife Management units shall be operated by a landowner association that owns land within the Cooperative Wildlife Management unit.

(b) Any person hunting on a Cooperative Wildlife Management unit must comply with all rules established by the Wildlife Board.

(2)(a) The minimum acreage accepted for a Cooperative Wildlife Management unit is 320 contiguous acres.

(b) The Wildlife Board may approve a Cooperative Wildlife Management unit that is less than 320 contiguous acres only if it is in the best interest of wildlife, landowners, and the public.

R657-21-4. Application for Certificate of Registration.

(1) Applications for Cooperative Wildlife Management units are available from division offices.

(2) In addition to the application, the landowner association must provide:

(a) a petition containing the signature and acreage of each participating landowner agreeing to terms of this rule;

(b) a map to scale showing the exterior boundaries of the proposed posted hunting unit; and

(c) a $5 non refundable application fee.

(4) The division may return any application that is incomplete or completed incorrectly.

(3) Applications must be completed and returned to the Salt Lake division office 60 days prior to the applicable seasons.

(4)(a) Upon receipt of the completed application, the division may issue a certificate of registration to a landowner association to operate a Cooperative Wildlife Management unit.

(b) Division review of the application may require up to 45 days.

(5) Certificates of registration are issued annually and are effective from July 1, or date of issuance, through June 30 of the following year.

R657-21-5. Renewal of a Certificate of Registration.

(1)(a) The landowner association may renew the certificate of registration for the Cooperative Wildlife Management unit by completing and submitting a renewal application and a non refundable $5 renewal fee.

(b) The renewal application must be submitted at least 60 days prior to the applicable seasons.

(2) Any changes from the previous year's certificate of registration must be indicated on the renewal application.

(3)(a) If the landowner association requests additional land to be included in the Cooperative Wildlife Management unit, the application must contain the signatures of the additional landowners and a map showing the new proposed boundary.

(b) If the landowner association requests land to be withdrawn from the Cooperative Wildlife Management unit, the application must include a copy of the previously submitted petition with the appropriate landowners' signatures deleted and a map showing the new proposed boundary.

R657-21-6. Cooperative Wildlife Management Unit Agents.

A landowner association may appoint one Cooperative Wildlife Management unit agent per 100 acres up to a maximum of 30 agents to monitor access and protect the private property of the Cooperative Wildlife Management unit.

R657-21-7. Permits.

(1) Permits may not be sold more than 15 days before the start of the first applicable hunting season.

(2) The division shall provide to the public a complete list of the current year's Cooperative Wildlife Management units, wildlife to be hunted, date, time, place and number of permits for public sale at least 15 days before the first applicable hunting season.

(3) A permit entitles the holder to hunt only small game and waterfowl in the Cooperative Wildlife Management unit as specified on the permit.

R657-21-8. Permit Number.

(1)(a) The division and landowner association, acting jointly, shall determine the number of permits available for each Cooperative Wildlife Management unit.

(b) If the division and the landowner association disagree over the number of permits, the Wildlife Board may mediate and determine the number of permits issued.

(2)(a) The division and the landowner association, acting jointly, shall determine the cost of the permits.

(b) Permit fees should not be so prohibitively expensive that buyers resist purchase of the permits available for general public sale.

R657-21-9. Season Dates.

(1) A landowner association may petition the Wildlife Board for variances from general statewide season dates.

(2) Any petition for a variance in season dates must be made at a regularly scheduled meeting of the Wildlife Board at least 45 days prior to the applicable season.

R657-21-10. Rights-of-Way.

Landowner associations may not restrict established public access to public land which is enclosed by the posted hunting unit.

R657-21-11. Habitat Improvement.

(1) The Wildlife Board encourages landowner associations to improve wildlife populations by developing wildlife habitat on their lands using some of the funds received from permit sales.

(2)(a) The division may provide technical assistance, seed and seedings, species specific habitat information and wildlife stock, and may cooperate in water development projects for wildlife after the landowner association has written an approved Wildlife Habitat Management Plan.

(b) The Wildlife Habitat Management Plan may be in the form of a memorandum of understanding between the landowner association and the division.

(c) The division may contribute the landowner's share in ASCS Agricultural Conservation Practices for wildlife, provided the landowner agrees not to graze or harvest crops on the land.

KEY: wildlife, small game, wildlife law
1990 23-23-3
Notice of Continuation May 22, 2000

R657. Natural Resources, Wildlife Resources.
R657-33. Taking Bear.
R657-33-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means any lure containing animal, mineral or plant materials.

(b) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(c) "Bear" means Ursus americanus, commonly known as black bear.

(d) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(e) "Cub" means a bear less than one year of age.

(f) "Evidence of sex" means the sex organs of a bear, including a penis, scrotum or vulva.

(g) "Green pelt" means the untanned hide or skin of a bear.

(h) "Pursue" means to chase, tree, corner or hold a bear at bay.

(i) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

R657-33-3. Permits for Taking Bear.

(1)(a) To take a bear, a person must first obtain an annual Wildlife Habitat Authorization, and a limited entry bear permit for a specified management unit as provided in the proclamation of the Wildlife Board for taking bear.

(b) To pursue bear, a person must first obtain an annual Wildlife Habitat Authorization, and a bear pursuit permit from a division office.

(2) Any limited entry bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

R657-33-4. Purchase of License or Permit by Mail.

(1) A person may purchase a Wildlife Habitat Authorization or bear pursuit permit by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification and fee.

(2)(a) Personal checks, cashier's check or money orders will be accepted.

(b) Personal checks drawn on an out-of-state will not be accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-33-5. Hunting Hours.

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-33-6. Firearms and Archery Equipment.

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) a bow and arrows, except a crossbow may not be used.

R657-33-7. Traps and Trapping Devices.

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-33-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-603-5.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-33-9. Prohibited Methods.

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-33-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device

that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife.

R657-33-11. Party Hunting.

A person may not take a bear for another person.

R657-33-12. Use of Dogs.

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the proclamation of the Wildlife Board for taking bear.

(2) The owner and handler of dogs used to take or pursue bear must have a valid bear permit or bear pursuit permit in possession while engaged in taking or pursuing bear.

(3) When dogs are used in the pursuit of a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3).

R657-33-13. Certificate of Registration Required for Bear Baiting.

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration are issued only to holders of valid limited entry bear archery permits.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) The following information must be provided to obtain a certificate of registration for baiting: township, range, section to the nearest 1/4 section, county, drainage, type of bait used, and written permission from the appropriate landowner for private lands or appropriate land management agency for public lands.

(5)(a) The division recommends that any person interested in baiting on any lands administered by the Forest Service or Bureau of Land Management verify that the lands are open to baiting before applying for a limited entry bear archery permit.

(b) Areas which are open to baiting on National Forests are designated on a map which may be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a certificate of registration.

(c) Areas generally closed to baiting stations by these federal agencies include:

(i) designated Wilderness Areas;

(ii) heavily used drainages or recreation areas; and

(iii) critical watersheds.

(6) A $5 handling fee must accompany the application.

(7) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(8) Any person tending a bait station must be listed on the certificate of registration.

R657-33-14. Use of Bait.

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person may establish or use only one bait station. The bait station may be used during both open seasons.

(c) Bear lured to a bait station may not be taken with any firearm or the use of dogs.

(d) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(e) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the proclamation of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death; and

(ii) a certificate of brand inspection or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; or

(b) 1/2 mile of any permanent dwelling or campground.

(6) Violations of this rule and the proclamation of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

R657-33-15. Tagging Requirements.

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-33-16. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its skull.

R657-33-17. Permanent Tag.

(1) Each bear must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-33-18. Transporting Bear.

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

R657-33-19. Exporting Bear from Utah.

(1) A person may export a legally taken bear or its parts if that person has a valid license and permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-33-20. Donating.

(1) A person may donate protected wildlife or their parts to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

R657-33-21. Purchasing or Selling.

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a gall bladder, tooth, claw, paw or skull of any bear.

R657-33-22. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

R657-33-23. Livestock Depredation.

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, which shall authorize a local hunter to take the offending bear or notify a Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation who may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken with any weapon authorized for taking bear.

(4)(a) Any bear taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) A bear that is killed in accordance with Subsection (1)(a) shall remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(c) A person may acquire only one bear annually.

(5)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating bear as needed.

R657-33-24. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

R657-33-25. Taking Furbearers.

(1) Furbearers, including badger, beaver, black-footed ferret, bobcat, fisher, red fox, gray fox, kit fox, lynx, marten, mink, otter, ringtail, skunk, weasel, wolf and wolverine may be taken only in accordance with the Furbearer Proclamation.

(2) A person may not disturb, remove or possess a trap, trapping device or any wildlife held in a trap without first

obtaining written permission from the trap owner.

R657-33-26. Taking Bear.

(1) A person may take only one bear during the season and from the limited entry area specified on the permit.

(2)(a) A person may not take or pursue a female bear with cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking and pursuing bear.

(4) Season dates, closed areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-27. Bear Pursuit.

(1) Bear may be pursued only by persons who have obtained a bear pursuit permit. The bear pursuit permit does not allow a person to kill a bear.

(2) Pursuit permits may be obtained at Division offices.

(3) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day; or

(c) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(4) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(5) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Section R657-33-12(3).

(6) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-28. General Application Information.

(1) A person must apply for or obtain an annual wildlife habitat authorization before the division may issue a bear permit.

(2) A person may not apply for or obtain more than one bear permit for the same year, except as provided in Subsection R657-33-27(3).

(3) A person must be 12 years of age or older by the posting date of the drawing to apply for a bear permit.

(4) Limited entry bear permits are valid only for the management unit and for the specified season designated on the permit.

R657-33-29. Waiting Period.

(1) Any person who purchases a permit valid for the current season, may not apply for a permit for a period of two years.

(2) Any person who draws a permit for the current season, may not apply for a permit for a period of two years.

R657-33-30. Application Procedure.

(1) Applications are available from license agents and division offices.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three management unit choices when applying for limited entry bear permits. Management unit choices must be listed in order of preference.

(c) Applicants must specify on the application whether they want a limited entry bear permit or a limited entry bear archery permit.

(i) The application may be rejected if the applicant does not specify either a limited entry bear permit or limited entry bear archery permit.

(ii) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(3) A wildlife habitat authorization may be purchased before applying, or the wildlife habitat authorization will be issued to the applicant upon successfully drawing a permit.

(b) The wildlife habitat authorization number or fee must be submitted with the application.

(4)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking and pursing bear. Applications filled out incorrectly or received later than the date prescribed in the bear proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(5)(a) Late applications will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(6) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(7) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-33-32(6)(b).

(8) To apply for a resident permit, a person must establish residency at the time of purchase.

(9) The posting date of the drawing shall be considered the purchase date of a permit.

R657-33-31. Fees.

(1) Each application must include:

(a) the permit fee, which includes the nonrefundable handling fee; and

(b) the wildlife habitat authorization fee, if it has not yet been purchased.

(2)(a) Personal checks, money orders, cashier's checks and credit cards will be accepted.

(b) Personal checks drawn on an out-of-state account will not be accepted.

(c) All payments must be made payable to the Utah Division of Wildlife Resources.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(4)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division shall charge a returned check collection fee for any check returned unpaid.

(5) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.

R657-33-32. Drawings and Remaining Permits.

(1) Drawing results will be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(2) A list of remaining permits will be available on the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(3) Permits remaining after the initial drawing are sold only by mail beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear.

(4) Applications are available from division offices and license agents.

(5) The same application form used for the initial drawing must be used when applying for remaining permits by mail. The handling fees are nonrefundable.

(6)(a) Permits remaining after both drawings will be sold over-the-counter, in person or through the mail on a first-come, first-served basis only from the Salt Lake division office on the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) Residents or nonresidents may purchase any of the remaining permits.

(7) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.

(8)(a) A person may withdraw their application for the bear drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) A person may not amend a withdrawn application, nor reapply after the application has been withdrawn.

(d) Handling fees will not be refunded.

R657-33-33. Bonus Points.

(1) A bonus point is awarded for a valid unsuccessful application in the drawing.

(2) Bonus points are forfeited if the person obtains a permit, including any permit obtained after the drawing.

(3) Bonus points are not transferable.

(4) Bonus points are tracked by using the applicant's social security number or division-issued hunter identification number.

R657-33-34. Refunds.

(1)(a) Unsuccessful applicants, who applied in the initial drawing and who applied with a check or money order, will receive a refund in July.

(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order, will receive a refund in August.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-33-35. Duplicate License, Wildlife Habitat Authorization and Permit.

Whenever any unexpired license, wildlife habitat authorization, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, wildlife habitat authorization or permit, whichever is less.

KEY: wildlife, bear*, game laws

May 17, 2000 23-14-18

Notice of Continuation March 24, 1998 23-14-19

23-13-2

R708. Public Safety, Driver License.
R708-32. Uninsured Motorist Database.
R708-32-1. Authority.

(1) This rule is promulgated in accordance with the Uninsured Motorist Database Program ("database") as required by Section 41-12a-803(7).

R708-32-2. Purpose.

(1) The purpose of this rule is to define the procedures which will be used to administer the provisions of the "database" and the information and format in which it will be available.

R708-32-3. Definitions.

(1) "Uninsured Motorist" means a driver who operates a vehicle in violation of the provisions of Title 41, Chapter 12a.

(2) "Database" means the Uninsured Motorist Identification Database created as per Section 41-12a-803.

(3) The terms "division" and "program" are as defined in Section 41-12a-802.

R708-32-4. Access.

(1) In accordance with Section 41-12a-803, insurance "status" information will be provided only to authorized personnel of federal, state and local governmental agencies who have access through dispatchers to the Driver License and Motor Vehicle Division's computer information screens (1027 and 1028).

(2) Authorized personnel seeking information from this database will be limited to receiving the following responses:

(a) YES = Strong indication of mandatory insurance in force.

(b) NO = Strong indication mandatory insurance is not in force.

(c) EXEMPT = Vehicle is exempt from mandatory auto insurance, such as farm vehicles.

(d) NOT FOUND = Vehicle not part of insurance database.

(e) NOT AVAILABLE = Communications with computer interrupted.

(3) Access to additional information other than "YES", "NO", "EXEMPT", "NOT FOUND," or "NOT AVAILABLE", shall be limited to the following persons who shall sign a Certificate of Understanding.

(a) Financial Responsibility Section Manager and employees.

(b) Driver License Division Director, Deputy Director, and Bureau Chiefs.

(c) Other employees authorized by the Driver License Division Director, Deputy Director or Bureau Chiefs.

(4) Additional information, if available, may include: the vehicle owner's name and address, date of birth, driver license number, license plate number, vehicle identification number, insurance company name, policy number, issue and expiration dates of the owner's vehicle insurance policy.

KEY: uninsured motorist database
April 16, 1996 41-12a-803(7)
Notice of Continuation June 1, 2000

R708. Public Safety, Driver License.

R708-36. Disclosure of Personal Identifying Information in MVRs.

R708-36-1. Purpose.

One of the responsibilities of the division is to compile information regarding the driving record of licensed drivers in Utah. This information is searched, compiled and summarized by the division in a report called a Motor Vehicle Record (MVR). The MVR contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Section 53-3-109 and Title 63, Chapter 2 (Government Records Access and Management Act). However, such laws provide for limited public disclosure of such information because the Division Director has determined it is in the best interest of pubic safety in order to protect the public against fraud and misuse of the MVR. It is the purpose of this rule to set forth the contents of the MVR and the procedure to be followed in disclosing it.

R708-36-2. Authority.

This rule is authorized by Section 53-3-109(5).

R708-36-3. Content of MVRs.

(1) The personal identifying information contained in an MVR consists of the driver name, driver license number, and in certain circumstances, the driver address.

(2) The driver name and driver license number will appear on every MVR released by the division to qualified requesters.

(3) Driver address will appear only on MVRs released to licensed private investigators or investigative agencies certified by the Department of Public Safety. The division may make exceptions to this procedure, provided the exception falls under a permissible use set forth in the DPPA.

(4) All MVRs will contain the driver's 5-digit zip code, date of birth, military status, license status, license issue/expiration dates, license class, endorsements, reportable arrests, convictions, reportable department actions, and reportable failure to appear/comply notations.

R708-36-4. Disclosure Procedure.

(1) When properly requested to do so the division will search its driver license files and then compile and furnish an MVR on any person licensed in the state.

(2) MVRs shall only be released to qualified requesters in accordance with the DPPA.

(3) In order to receive an MVR, the requester must:

(a) provide acceptable proof of identification such as a driver license, official identification card, or other official documentation. The division may also require other forms of identification as needed;

(b) declare one or more permissible uses within the DPPA under which the requester is qualified to receive the information. The division will provide a list of the permissible uses for the requester to review if necessary. The division may determine that the requester is not entitled to receive an MVR if the division has reason to believe the declaration is invalid, or that any other condition in this rule has not been met;

(c) provide sufficient information to locate the driver records;

(d) pay appropriate fees in a manner approved by the division; and

(e) agree to comply with state and federal laws regulating re-sale and further disclosure of information on an MVR.

R708-36-5. Bulk Requests.

Bulk customers (generally those requesting 50 or more MVRs at a time) may meet the conditions in this rule by contracting with the division.

R708-36-6. Electronic Transactions.

Requests for MVRs may be transacted electronically as approved by the division.

KEY: driver license, motor vehicle record, privacy
June 1, 2000 53-3-109(5)

R765. Regents (Board of), Administration.
R765-626. Lender-of-Last-Resort Program.
R765-626-1. Purpose.

The purpose of this rule is to provide the terms and conditions under which UHEAA will provide Lender-of-Last-Resort (LLR) loans to borrowers who have otherwise been unable to obtain a subsidized or unsubsidized Federal Stafford Loan from a lender participating in the UHEAA loan program.

R765-626-2. References.

2.1 Utah Code. Title 53B, Utah System of Higher Education, Chapter 12.

2.2 U.S. Congress, Title IV of the Higher Education Act of 1965, as amended.

2.3 U.S. Department of Education. Code of Federal Regulations, 34 CFR Part 682.401(c).

R765-626-3. General.

3.1 A student who meets eligibility requirements set forth in 34 CFR Part 682.201, but is unable to obtain a subsidized or unsubsidized Federal Stafford Loan from a lender participating in the UHEAA loan program, shall be eligible for a LLR loan if the school the student is attending is:

3.1.1 located in Utah; and

3.1.2 an eligible institution as determined by the U.S. Department of Education.

3.2 Notwithstanding 3.1.1, a Utah resident who attends an out-of-state school shall be eligible for a LLR loan.

3.3 The minimum amount for which UHEAA will authorize a loan guarantee for an LLR loan is $200.

3.4 LLR loans guaranteed by UHEAA shall be originated by the Utah State Board of Regents Loan Purchase Program (LPP).

3.5 For LLR purposes, the LPP shall maintain office hours from 8:00 a.m. to 5:00 p.m., Monday through Friday, except on state and federal holidays.

R765-626-4. Application Procedures.

4.1 To apply for an LLR loan, the student or school shall provide UHEAA with documentation verifying an eligible student has been unable to obtain a subsidized or unsubsidized Federal Stafford Loan for attendance at an eligible school from at least two eligible lenders.

4.2 Upon receipt of documentation described in 4.1, UHEAA shall approve the LLR loans and notify the school of the approval.

4.3 Once the LLR loans have been approved, UHEAA shall send an LLR loan information packet to the student.

4.4 The LLR information packet shall include:

4.4.1 an application and promissory note for an LLR loan with instructions to complete the application form and return it to UHEAA; and

4.4.2 counseling materials which include information relating to the borrower's loan obligation.

4.5 Once UHEAA receives the original, properly completed application and promissory note for an LLR loan, UHEAA shall inform the student as to the final status of the student's application within 60 days of receiving the properly completed form.

R765-626-5. Information Dissemination.

5.1 UHEAA shall disseminate to schools and lenders participating in the UHEAA loan program a copy of the final UHEAA LLR rule and notice of the effective date.

KEY: higher education, student loans*
February 1, 1997 **53B-12-101(6)**
Notice of Continuation May 5, 2000

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 399, as contained in the October 1, 1999 edition and amendments which appear, November 1, 1999, December 1, 2000, January 1, 2000, as printed by the Regulations Management Corporation Service, is incorporated by reference, except for Parts 391.11(b)(1), 395.1(k), 395.1(l), 395.1(m) and 395.1(n). These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5 and UCA 72-9-102(4) engaged in Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

C. Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, UCA 53-3-303.5 for intrastate drivers under R708-34,

D. Drivers involved wholly in intrastate commerce shall be at least 18 years old; unless transporting placarded amounts of hazardous materials; or 16 or more passengers including the driver.

E. Drivers in involved in interstate commerce shall be at least 21 years old.

KEY: trucks, transportation safety

June 1, 2000	**72-9-103**
Notice of Continuation March 31, 1997	**72-9-104**
	54-6-9
	63-49-4

R914. Transportation, Operations, Aeronautics.

R914-1. Rules and Regulations of the Utah State Aeronautical Committee.

R914-1-1. Authority.

A. This rule is established as required by Section 72-10-103.

R914-1-2. Definitions.

A. As used in this rule:

(1) Committee - the Utah Aeronautical Committee

(2) FAA - Federal Aviation Administration

(3) Division - Aeronautical Operations Division

R914-1-3. Licensing, Inspection and Closure of Airports.

A. In accordance with Section 72-10-117, all public use airports will be licensed annually by the Aeronautical Operations Division.

1. A license will be granted provided the airport is found to meet all safety requirements.

2. The Division may refuse or revoke a license and close an airport if safety criteria is not met.

3. Safety criteria required:

a. No pot holes or rutting in the surface of the runway, taxiway, or parking area.

b. No break-up of paved surfaces or improperly maintained surface.

c. No obstructions in the approach path or near the airport that cause an unsafe condition.

d. No excessive growth of vegetation in the runway or taxiway surface.

e. No inoperative or obscured runway or taxiway lighting system.

f. No unsecured airport area that allows livestock, people, or vehicles uncontrolled access to the runways, taxiways, or airport area.

g. No improper or inadequate runway marking.

h. No other items that can be determined to be a hazard to the operation of aircraft.

R914-1-4. Establishment and Location of Navigational Aids.

A. Procedure

1. Location site is selected.

2. Site is surveyed for location and elevation.

3. Selected site is submitted to the FAA for approval.

4. Upon receiving FAA approval, navigational aid may be installed.

5. After installation, navigational aid is checked and certified for operation by the FAA.

R914-1-5. Operational Safety.

A. In order to enhance the safety of aircraft operations and protect people and property, the Committee imposes the following operational safety rules:

1. All pilots operating aircraft in the State of Utah will comply with Federal Aviation Regulations, Part 61, August 31, 1989; Part 91, April 6, 1989; Part 135, April 6, 1989; and Part 121, July 24, 1989.

2. Obstruction to flight: Any obstacle or structure which obstructs the airspace above the ground or water level which is determined to be a hazard to the safe flight of aircraft shall be plainly marked, lighted or removed.

3. Determination of obstruction: When an obstacle or structure is determined to be a hazard to flight, the owner will be notified and will have ten days after receipt of the notice to take action to correct the hazard or appeal the determination to the Committee.

KEY: air traffic, aviation safety, airports, airspace

1990 72-10-103

Notice of Continuation December 10, 1997 72-10-119

R914. Transportation, Operations, Aeronautics.
R914-2. Safety Rules and Procedures for Aircraft Operations on Roads.
R914-2-1. Authority.

A. This rule establishes procedures as required by Section 72-10-118.

R914-2-2. Procedures.

A. Only lightly traveled roads will be used for aircraft operations. Counties will designate particular county road segments to be used.

B. The road to be used for aircraft operations will be inspected by ground personnel for safety prior to use.

C. The road segment to be used will be blocked off by ground personnel prior to aircraft operations to insure that there is no road traffic during the aircraft use period.

D. Landings will be permitted on roads during daylight hours only.

R914-2-3. Issuance of Special Licenses to Pilots Operating on Roads.

A. Applicant must be a holder of at least a private pilot certificate.

B. Applicant must have a minimum of 200 total flying hours and at least 25 hours in the type of aircraft to be used.

C. Applicant must have completed a proficiency review flight within the past 24 months.

D. Applicant must be familiar with short and soft field landing and take-off procedures and obstacle clearance procedures for the type aircraft used.

R914-2-4. Issuance of Special Licenses for Aircraft Landing on Roads.

A. Licenses will be issued only to those showing specific need to use roads for aircraft operations in order to accomplish a required service.

B. The applicant will be required to show proof of insurance pursuant to Section 72-10-118. Insurance must have no stipulations against off-airport operations.

KEY: licensing, aviation safety
1990 72-10-118
Notice of Continuation December 10, 1997

R966. Treasurer, Unclaimed Property.
R966-1. Requirements for Claims where no Proof of Stock Ownership Exists.
R966-1-2. Proof Requirements and Bonds.

A. For verified claims with a value less than $250.00, the person may file an affidavit entitled "Uniform Affidavit of Lost Certificate". Such affidavit will constitute and provide sufficient indemnification to permit the administrator to allow the verified claim.

B. For verified claims with a value equal to or greater than $250.00, the person may obtain a bond issued by a licensed surety company rated at least "A" or better by A.M. Best and Co., called an abandoned property bond. The bond shall be a fixed bond for dividends and other definite dollar value items. The bond shall be an open bond for stock certificates and shares claimed. Presentation of the proper bond, or both bonds if both are required, will constitute and provide sufficient indemnification to allow the administrator to allow the verified claim.

KEY: stocks, bonds, property claims*
1990 **67-4a-501**
Notice of Continuation December 31, 1997

R982. Workforce Services, Administration.
R982-601. Provider Code of Conduct.
R982-601-101. Statement of Purpose.

The Provider Code of Conduct is written in addition to all Department of Workforce Services policies, rules and regulations governing delivery of services to clients. The purpose of the code is to protect vulnerable clients from abuse, neglect, maltreatment and exploitation. The Code of Conduct clarifies the expectation of conduct for providers of contracted, licensed and certified programs and their employees, which includes administrative staff, non direct care staff, direct care staff, support services staff and any others when interacting with clients. Written agency policy required by this code must be approved by the licensing or certifying authority. Nothing in this Code shall be interpreted to mean that clients should not be held accountable for misbehavior or inappropriate behavior on their part, or that providers are restricted from instituting suitable consequences for such behavior.

R982-601-102. Abuse, Sexual Abuse and Sexual Exploitation, Neglect, Exploitation, and Maltreatment Prohibited.

A. No contracted, licensed or certified agency, individual, employee shall abuse, sexually abuse or sexually exploit, neglect, exploit or maltreat; (as defined below) any client.

1. No person shall cause physical injury to any client. All injury to clients (explained or unexplained) shall be documented in writing and immediately reported to supervisory personnel.

2. No person by acting, failing to act, encouragement to engage in, or failure to deter from will cause any client to be subject to abuse, sexual abuse or sexual exploitation, neglect, exploitation, or maltreatment.

3. No person shall engage any client as an observer or participant in sexual acts.

4. A person may not make clearly improper of a client or their resources for profit or advantage.

B. Failure to comply with this Code of Conduct may result in corrective action, probation, suspension, and/or termination of contract, license or certification, in accordance with administrative procedures act and Department of Workforce Services regulations.

R982-601-103. Definition of Client.

Any person under the age of 18 years; and any person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, use of drugs, intoxication, or other cause, to the extent that he is unable to care for his own personal safety, health or medical care; and is a participant in, or a recipient of a program or service contracted with, or licensed or certified by the Department of Workforce Services.

R982-601-104. Definitions of Abuse, Sexual Abuse and Sexual Exploitation, Neglect, Exploitation, and Maltreatment.

A. Abuse of clients may include, but is not limited to:

1. Harm or threatened harm, meaning damage or threatened damage to the physical or emotional health and welfare of a client such as failure.

2. Unlawful confinement.

3. Deprivation of life-sustaining treatment.

4. Physical injury including, but not limited to, any contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.

5. Any type of physical hitting or corporal punishment inflicted in any manner upon the body.

B. Sexual abuse and sexual exploitation will include, but not be limited to:

1. Engaging in sexual intercourse with any client.

2. Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.

3. Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.

4. Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.

5. Committing or attempting to commit acts of sodomy or molestation with a client.

6. This definition is not to include therapeutic processes used in the treatment of sexual deviancy or dysfunction which have been outlined in the clients treatment plan and is in accordance with written agency policy.

C. Neglect may include but is not limited to:

1. Denial of sufficient nutrition.

2. Denial of sufficient sleep.

3. Denial of sufficient clothing, or bedding.

4. Failure to provide adequate supervision; including impairment of employee resulting in inadequate supervision. Impairment of an employee may include but is not limited to use of alcohol and drugs, illness, sleeping.

5. Failure to arrange for medical care and/or medical treatment as prescribed or instructed by a physician when not contraindicated by agency after consultation with agency physician.

6. Denial of sufficient shelter, except in accordance with the written agency policy.

D. Exploitation will include, but is not limited to:

1. Utilizing the labor of a client without giving just or equivalent return except as part of a written agency policy which is in accordance with reasonable therapeutic interventions and goals.

2. Using property belonging to clients.

3. Acceptance of gifts as a condition of receipt of program services.

E. Maltreatment will include, but is not limited to:

1. Physical exercises, such as running laps or performing pushups, except in accordance with an individual's service plan and written agency policy.

2. Chemical, mechanical or physical restraints except when authorized by individual's service plan and administered

by appropriate personnel or when threat of injury to the client or other person exists.

3. Assignment of unduly physically strenuous or harsh work.

4. Requiring or forcing the individual to take an uncomfortable position, such as squatting or bending, or requiring or forcing the individual to repeat physical movements when used solely as a means of punishment.

5. Group punishments for misbehaviors of individuals except in accordance with the written agency policy.

6. Verbal abuse by agency personnel: engaging in language whose intent or result is demeaning to the client except in accordance with written agency policy which is in accordance with reasonable therapeutic interventions and goals.

7. Denial of any essential program service solely for disciplinary purposes except in accordance with written agency policy.

8. Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes except in accordance with written agency policy.

9. Requiring the individual to remain silent for long periods of time solely for the purpose of punishment.

10. Extensive withholding of emotional response or stimulation.

11. Exclusion of a client from entry to the residence except in accordance with the written agency policy.

R982-601-105. Reporting Requirements.

Any contracted, licensed or certified agency, individual, or employee is responsible to document and report abuse, sexual abuse and sexual exploitation, neglect, maltreatment and exploitation as outlined in this Code and cooperate fully in any resulting investigation.

1. Any person will immediately report abuse, sexual abuse and sexual exploitation, neglect, maltreatment or exploitation by contacting the local Regional Office within 24 hours. During weekends and on holidays such reports will be made to the Regional Office On-call worker.

2. All reports and documentation made regarding situations of abuse, sexual abuse and sexual exploitation, neglect, and exploitation will be made available upon request, or with court order when required by federal regulations, to appropriate Department of Workforce Services personnel and law enforcement.

3. All injury to clients (explained or unexplained) shall be documented in writing and immediately reported to supervisory personnel.

4. A poster, provided by the Department of Workforce Services, notifying contractor employees of their responsibilities to report violations and giving appropriate phone numbers, is required to be prominently displayed in all contractor facilities.

KEY: economic development, training programs, code of conduct, unemployed workers

July 1, 1997 **35A-1-104(1)**
35A-1-104(2)

R986. Workforce Services, Employment Development.
R986-418. Case Management.
R986-418-802. Case Records.

1. Current Department Practices

a. The automated computer system (PACMIS) assigns a case number to each case record and a client ID number to each client on the case.

b. Documentation, eligibility information and determination of benefit level is maintained in the case folder in the name of the head of household.

c. Case records are not removed from the local office except by subpoena or by request of the Director or designee, Bureau of Quality Control, or Office of Recovery Service.

R986-418-804. Notification.

The department adopts 7 CFR 273.10(g), 7 CFR 273.13, 7 CFR 273.14(b) and 7 CFR 273.21(j)(2), 1992 ed. which are incorporated by reference.

R986-418-806. Action on Reported Changes.

The department adopts 7 CFR 273.12, 1992 ed. which is incorporated by reference.

1. Current Department Practices

a. Address changes within the local office area are made to the computer so benefits will be issued to correct addresses.

b. Benefits may be held without notice if a move is reported but the new address information is missing, incomplete, or inaccurate.

c. Cases may be transferred to another local office when the client reports a change of address.

d. The two districts coordinate changing the information to the case record.

e. The client is sent a notice of action to give new local office address, phone number and requesting any needed verifications.

R986-418-808. Replacement of EBT cards and PINs.

The department adopts 7 CFR 274.12(f)(5), 1995 ed. which is incorporated by reference.

R986-418-810. Restoration of Lost Benefits.

The department adopts 7 CFR 273.17, 1992 ed. which is incorporated by reference.

1. Current Department Practices

a. Food stamps are not restored if the loss is caused by the household's failure to report information which would have increased its food stamps.

R986-418-812. Claims Against the Household.

The department adopts 7 CFR 273.16, 7 CFR 273.18, 1992 ed. which is incorporated by reference. The department shall require compliance with Section 35A-3-111.

1. Current Department Practices

a. The Department will make no claim of overpayment against the household for procedural errors. These are procedural errors:

i. The agency failed to have the household sign the application form.

ii. The agency failed to have the household complete a current work registration form.

iii. The agency certified the household in an incorrect district.

b. Claims of overpayment are referred to the State Office of Recovery Service for collection.

c. When computing an overpayment, if the household fails to report a required change in earned income within the prescribed time frames, do not allow the 20% earned income deduction.

KEY: food stamps, benefits, government hearings
February 19, 1997 35A-3-103
Notice of Continuation February 10, 1997

R994. Workforce Services, Workforce Information and Payment Services.

R994-102. Purpose of Employment Security Act.

R994-102-101. Preamble.

(1) One of the purposes of the Employment Security Act, Utah Code Section 35A-4-101 et seq., the Act, is to lighten the burdens of persons unemployed through no fault of their own by maintaining their purchasing power in the economy. The legislature, in establishing this program, recognized the substantial social ills associated with unemployment and sought to ameliorate these problems with a program to pay workers for a limited time while they seek other employment. It is because of these reasons that it is in the public interest to liberally construe and administer the Act. It is important that both the worker seeking benefits and the employer who will ultimately pay for the worker's benefits understand the process by which contributions are assessed and benefits are paid. The following rules are written to explain and clarify the application of the Act. In applying these rules to individual cases the Department will consider the reasonableness of claimant's action, the totality of the employment situation, and whether the claimant has a genuine continuing attachment to the labor market.

(2) The Department of Workforce Services has an obligation to be unbiased in administration of the Act. Therefore, the Department must allow all parties due process before dispensing the revenues provided by the Employment Security Act in order to protect the investment of employers who contributed to the unemployment insurance fund, the interests of the unemployed workers who may be eligible for the dollars provided by the fund, and the community which benefits from a stable workforce through the maintenance of purchasing power. Due process requires that employers will not be charged contributions for benefits, and workers will not be denied benefits, without the opportunity to provide information and contest or refute the information considered in the decision making process.

(3) When an eligible worker has no work available and there exists no dispute among the worker, the employer, or the Department benefits must be paid promptly. However, when a worker quits, is fired, or has any other issue under the law an investigation of the circumstances must take place to determine if benefits can be paid. In determining whether or not the worker is eligible for benefits, his actions are measured against the standards of just cause following a discharge in accordance with Section R994-405-202, and good cause in accordance with Section R994-405-102 and equity and good conscience in accordance with Section R994-405-103 following a voluntary separation from employment. When one party fails to provide information or when that information is less credible, the result is that the party who has the responsibility to provide information may not prevail in its position.

R994-102-102. Evidentiary Requirements.

(1) The evidentiary requirement for Department decisions is a preponderance of the evidence. It is not necessary to meet criminal court standards of beyond reasonable doubt or overwhelming evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Although the evidence that is required for an appeal decision must be of probative value, an initial determination must be made based on the best or most logical information available. Sworn testimony or first-hand statements have greater believability than unsworn statements or hearsay. A great deal of information is provided to the Department through telephone conversations and written reports. While the information provided in this manner will always be considered by the Department, it cannot be relied upon more than credible sworn testimony when the parties have been given an opportunity to present evidence in person.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination, has inherent infirmities which make it unreliable. The failure of one party to provide information either initially or at the appeals hearing severely limits the amount and quality of information upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the decision making process by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the social integrity of the unemployment insurance system.

KEY: unemployment compensation
1987 35A-4-102
Notice of Continuation May 29, 1997

R994. Workforce Services, Workforce Information and Payment Services.

R994-202. Employing Units.

R994-202-101. General Definition.

The objective of this rule is to define when a legal entity is the employing unit and define wages specific to the employing unit. When the legal status of an employing unit is in question, the Department may use various sources to determine the status of the employing unit based upon Section 35A-4-313. These sources may include, but are not limited to income tax returns, financial and business records, regulatory licenses, legal documents, and information from the parties involved.

(1) Proprietorship.

A business which is owned by a person who has either the legal right and exclusive title, or dominion, or the ownership of that business is a proprietorship. The individual proprietor is the employing unit. The proprietor's services and the services of the proprietor's spouse, minor children under age 21, and parents are exempt from coverage and they are not entitled to receive unemployment benefits based upon proprietorship compensation (see also rule on wages 35A-4-208).

(2) Partnership.

The partners are the employing unit. The partners' services are exempt from unemployment coverage and they are not entitled to receive unemployment benefits based upon partnership compensation. If the partnership changes because partners are added or one or more of the partners leaves the partnership, that legal entity ceases to exist at the point the change occurs, and any remaining entity becomes a different employing unit. (For rule on limited partnerships, see 35A-4-208(11). For rule on family employment, see 35A-4-205(1)(h).)

(3) Corporation.

The corporation is the employing unit. Corporations must be registered with the Utah Division of Corporations or similar agency in another state. In the absence of such registration or a dissolution, the department will determine the employing unit based upon the best available information. A change of ownership occurs when substantially all of the corporate assets are sold or transferred. The sale, transfer, or exchange of corporate stock is not a change of ownership. All individuals employed by the corporation, including officers, are employees. Compensation to officers who perform services necessary to the corporation is deemed to be wages. Payments to corporate employees such as dividends, loans and expenses in lieu of compensation for services may be reclassified as wages by the department. Reclassification will be based upon the extent and significance of the work performed and the documentation supporting such payments. This applies to all corporations regardless of income tax reporting status. The following payments to officers are generally not wages:

(a) directors fees which are uniform and reasonable;

(b) reimbursement for expenses which are reasonable and/or documented by receipts;

(c) loans supported by notes and reasonable repayment schedules. Non-interest bearing notes which are payable upon demand, no payment schedule, are considered wages if the officer is performing necessary services for the corporation;

(d) documented returns of investment where the officer has loaned or invested money in the corporation.

(4) Limited Liability Company (LLC).

A LLC is the employing unit if it is registered and in good standing with the Utah Department of Commerce. The department will consider a LLC that is not registered or in a canceled status to be a proprietorship or partnership, based upon the best information available.

(a) Members of a LLC are not employees of the LLC and their remuneration is exempt from coverage provided both of the following criteria are met:

(i) the Limited Liability Company is registered and in good standing with the Department of Commerce as a LLC and,

(ii) the member has a bona fide ownership interest in the LLC and is listed in the articles of organization or the operating agreement.

(b) The department may look beyond the articles of organization or the operating agreement to the actual working relationship to determine the employment status of individuals in the LLC.

(c) A nonmember manager is an employee of the LLC.

(d) Legal actions, subpoenas, and court orders will be issued to the ownership of record.

(e) Assessments and liens will be issued in the name of the LLC, and not against the ownership of record.

(5) Trust.

The trust is the employing unit. A trust instrument or document must exist in order for the entity to be recognized. In the absence of such document, the department will determine the employing unit based upon the best available information. A trustee is generally not an employee of the trust unless there is sufficient evidence to demonstrate that the trustee does not control the trust with respect to fiduciary and management responsibilities. A trustee controlled and directed by another party is an employee of the trust. A bankruptcy trustee is not an employee of the bankrupt entity. The trustee is an independent contractor selected by the creditors and approved by the court. Corporate trustees are employees of the corporation. Their compensation, as that of corporate officers, is subject to unemployment contributions.

(6) Association.

An association is a collection or organization of persons or other legal entities who have joined together for a certain common objective.

(7) Joint Venture.

A joint venture is a one-time grouping of two or more persons or corporations in a business undertaking. Unlike a partnership, a joint venture does not entail a continuing relationship among the parties. The exempt or employment status of proprietors, partners or corporate officers is not lost in the formation of the joint venture. Services of proprietors or partners are exempt. The services of a corporation's officers are subject.

(8) Estate.

An estate established to manage the business activities of a deceased proprietor or partner is the employing unit. The services of the executor or administrator of the estate are not subject to unemployment contributions.

(9) Temporary Help Company.

(a)(i) A temporary help company is the employing unit for those workers placed with a client company to fill assignments

with a finite ending date in special, unusual, seasonal, or temporary skill shortage situations.

(ii) A company that provides all or substantially all of the regular, full-time workers of a client company, with no restrictions or limitation on the duration of employment, is not the employing unit for those workers and, therefore, the client company may be considered the employing unit subject to all of the provisions of the Employment Security Act as an employer, unless the company is licensed pursuant to the Employee Leasing Company Licensing Act, Section 58-59-101 et seq.

(b) If the temporary help company implements an action taken by the client to remove a worker from employment, the temporary help company is responsible for that action, whether or not the action is authorized by a written contract, unless the worker continues to be paid by the temporary help company;

(c) Rule R994-202-103, paragraphs 5(d), Exempt Employment, and 5(e), Benefit Charges, pertaining to employee leasing companies also apply to temporary help companies.

(10) Common Paymaster.

(a) A common paymaster situation exists when two or more related corporations concurrently employ the same individual and one of the corporations compensates the individual for the concurrent employment. Internal Revenue Service rules and determinations related to a common paymaster situation are not controlling but serve as guidelines in the department's determination as to which entity is the employing unit.

(b) The department will recognize a common paymaster if the closely related corporations satisfy all of the following criteria:

(i) each related company is a corporation;

(ii) there must be at least 50 percent common ownership of stock or interest, or there must be at least 50 percent common officers in the related companies, or 30 percent of the employees work for all of the related companies;

(iii) the reporting for any calendar year must be consistent with FUTA annual 940 reporting; and

(iv) the employee(s) must be performing concurrent service for some or all of the related companies.

(c) Employers who wish to report under a common paymaster will need to petition the department in writing for authorization. That authorization will stipulate to the requirements for reporting under a common paymaster, indicating that if at any time, the above criteria are not met, the department authorization is void.

(d) Employers who have not received department authorization to report as a common paymaster and are reporting as such, may be granted such status for past and future application if the four criteria noted above are satisfied.

(11) Payrolling.

(a) Payrolling is defined as the practice of an employing unit paying wages to the employees of another employer or reporting those wages on its payroll tax reports. Generally an employee is reportable by the employer:

(i) who has the right to hire and fire the employee;

(ii) who has the responsibility to control and direct the employee;

(iii) for whom the employee performs the service.

(b) For unemployment contributions purposes, payrolling is not allowed. Exceptions to this provision are noted in the rules pertaining to leasing and temporary service companies and common paymasters.

R994-202-102. Constructive Knowledge of Work Performed.

(1) General Definition.

The purpose of Subsection 35A-4-202(1)(d) is to establish who is liable for the employment of an individual hired to assist in performing the work of an employee. In a situation where an individual is employed to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by that employee.

(2) Constructive Knowledge.

An employer is deemed to have constructive knowledge if he should have reasonably known or expected that his employee would engage another individual to assist in performing the work.

(3) Examples of Actual or Constructive Knowledge.

(a) The employer who operates a trucking business, employs A to drive a truck to a certain location, unload the truck and return. A hires B to help unload the truck. The following examples show whether the employer is considered to have actual or constructive knowledge of the work performed by B.

(i) If the employer knows that B is helping A, the employer has actual knowledge of the work performed by B and therefore, B is considered to be employed by the employer.

(ii) If the employer does not know about B but knows that the unloading A is engaged to perform requires more than one person, the employer has constructive knowledge of the work performed by B and therefore, B is considered to be employed by the employer.

(iii) The employer tells A to do the work himself, however, A still hires B and the employer finds out but takes no action to prevent B from helping A in the future. In this case the employer has actual knowledge of the work performed by B and therefore, B is considered to be employed by the employer both for past and future work performed. However, if the employer takes action to prevent A from hiring help in the future, then B would not be considered to be employed by the employer even for the work already performed.

(iv) The employer tells A that he may do the work himself or hire someone to help him. A hires B but the employer is not told and does not know about B. The employer is considered to have constructive knowledge because he knows A might hire B.

(4) Reporting Requirement.

The employer has a responsibility to report all employment for which he is liable, therefore, the employer in the examples above should require that A report B's employment to him in those situations where the employer had actual or constructive knowledge of B's employment. However, A's failure to report B to the employer does not relieve the employer of the liability for the employment.

R994-202-103. Employee Leasing Companies.

(1) General Definition.

Subsection 35A-4-202(1) outlines the procedures for determining when an employee leasing company will be an employer for purposes of the unemployment compensation program. Since all employee leasing companies provide workers to client companies, the following rules establish the criteria set forth for determining an employee leasing company's status as an employer. The rules also establish standards for assessment and collection of unemployment compensation contributions, security bonds to insure payment of contributions, and issues of liability for benefit charges.

(2) Criteria for Determination of Status as an Employer.

(a) Before the employer may be defined by the Employment Security Act as a leasing employer, it must comply with the requirements of Sections 58-59-101 through 58-59-503 of the Utah Code. In the absence of such compliance, the department may choose to hold the "client employer" as the employing unit.

(3) Those workers who are not covered by a contract between the client company and leasing company remain the employees of the client company.

(4) If the employee leasing company implements an action taken by the client to remove a worker from employment, the leasing company is responsible for that action, whether or not the action is authorized by a written contract, unless the worker continues to be paid by the leasing company.

(5) Effect of Determination that Leasing Company is an Employer.

(a) When an employee leasing company qualifies as an employer under Subsection 35A-4-202(1), it will be subject to all provisions of the Act.

(b) Individuals excluded from coverage under Sections 35A-4-204 through 35A-4-206 of the Act will continue to be excluded from coverage even though they become "employees" of an employee leasing company. The following are some examples of those who are excluded:

(i) the proprietor, spouse, minor children, or parents of the proprietor;

(ii) partners in a business;

(iii) a patient of a hospital;

(iv) a student or student spouse at a school, college or university;

(v) a student as part of a school, college, or university certified training program; and

(vi) those participating in rehabilitation programs for governmental and non-profit organizations.

(c) If an employee leasing company does not otherwise qualify for treatment as a reimbursable employer or exempt employer, because it is not a governmental entity, nonprofit entity, or religious entity, it will be considered to be a contributing employer even if the client company could independently qualify for reimbursable or exempt status.

(d) Services otherwise exempt under the Act based on the nature of service or due to a specific exemption under Section 35A-4-204 through 35A-4-305 would continue to be exempt if such service is rendered by an employee leasing company. The following are examples of such services:

(i) real estate agents, insurance agents and securities brokers but only if they are paid solely by way of commission;

(ii) certain outside sales people paid solely by way of commission;

(iii) news carriers;

(iv) domestic services until $1000 in cash wages in a calendar quarter are paid to domestic employees supplied to any and all clients;

(v) agricultural services until $20,000 in cash wages in a calendar quarter are paid to agricultural employees supplied to any and all clients or 10 or more agricultural employees are supplied in 20 weeks to any and all clients.

(e) Liability for benefit ratio charges:

(i) When a client company contracts with a leasing company and the leasing company becomes the employer pursuant to Sections 58-59-101 through 58-59-503 of the Utah Code, the separation of employees from the client company is considered a reduction of force. The client company is not eligible for relief of charges.

(ii) For purposes of the Utah Employment Security Act, when the contract between a leasing company and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the leasing company is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(6) An employee leasing company which fails to qualify as an employer under Sections 58-59-101 through 58-59-501 and Subsection 35A-4-202(1) will be considered to be the AGENT of the client company. The client company remains the employer of its workers for all purposes of the Employment Security Act.

(7) Reporting Requirements.

(a) Any entity which begins to conduct a business as an employee leasing company must register with the department. For general requirements for reporting, see Section R994-312-304. Licensing penalties for failure to file the following forms timely or in the manner prescribed are outlined in Section 58-59-501 et. seq. of the Employee Leasing Company Licensing Act:

(i) Form 1, Status Report;

(ii) Form 3, Employer's Contribution Report;

(iii) Form 3H, Employer's Quarterly Wage List;

(iv) Form BLS 3020, Multiple Worksite Report.

(b) Employee leasing companies must, within 30 days of the effective date of a contract with a client, advise the Department of the following information:

(i) the effective date of the contract; and

(ii) the client's name, address and employer registration number, if the client is registered with this Department;

(iii) the client's type of business activity.

(c) An employee leasing company must, within 30 days following the termination of a contract with a client, advise the Department of the following information:

(i) the effective date of contract termination;

(ii) the legal name, address and, if available, the prior employer registration number of the client.

(d) Each client of an employee leasing company will be assigned a work site account number which is part of the

employee leasing company's account number. The employee leasing company is required to file an addendum with each quarterly "Employer's Contribution Report." The addendum must include:

(i) the client's name, site location address and work site account numbers;

(ii) the total amount of payroll paid during the quarter for each site location; and

(iii) the total number of employees working at each site location during the quarter.

(8) The Department may directly contact employee leasing companies or their clients in order to conduct investigations, audits and otherwise obtain information necessary for the administration of the Employment Security Act as permitted by Section 35A-4-312.

(9) Bonding/Contribution Payment Requirements.

(a) A licensed leasing company may be required to post a bond or make monthly contribution payments pursuant to R994-308-103.

(b) A leasing company which is not properly licensed under Section 58-59-101 through 58-59-501 of the Employee Leasing Company Licensing Act but continues to operate as such will be required to post a bond or make monthly contribution payments until the Utah Department of Commerce issues a cease and desist order, at which time the leasing company will no longer be considered an employer.

(c) The bond amount will be as prescribed by R994-308-104.

(d) Monthly contribution payments will be due by the 6th day of the following month.

(e) If an employer fails to post a bond or make monthly contribution payments, the department will petition the court to enjoin the leasing company from hiring employees.

(10) The rules pertaining to "common paymaster," Section R994-202-101(10) and "payrolling," R994-202-101(11) do not apply to leasing companies who are in compliance with the Employee Leasing Company Licensing Act, Sections 58-59-101 through 58-59-501.

KEY: unemployment compensation, employment
February 2, 2000 35A-4-202(1)
Notice of Continuation May 29, 1998

R994. Workforce Services, Workforce Information and Payment Services.

R994-204. Included Employment.

R994-204-201. General Definition.

The objective of Subsection 35A-4-204(2) is to explain when employment is covered under Utah law if an individual worked for one employer in more than one state. Unemployment insurance programs in all states use the parameters established in Section 35A-4-204.

R994-204-202. Service Is Localized in this State.

The service is considered to be localized in Utah if it is performed entirely within Utah. The service is also considered to be localized in Utah if performed both inside and outside of Utah, but the service outside of Utah is incidental to the service in Utah. The service is incidental if it is temporary or transitory in nature or consists of isolated transactions. The intent of the employer and employee will be used to determine whether the service is incidental to the service performed in Utah.

R994-204-203. Service Is Not Localized in Any State.

(1) If the service is not localized in any state but some of the service is performed by the individual in Utah, the entire service is covered in Utah if one of the following conditions apply:

(a) The Base of Operations is in Utah.

The individual's base of operations is in Utah. The "base of operations" is the place from which the employee starts work and to which he customarily returns for instructions from his employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in his trade or profession. The base of operations may be an individual's residence.

(b) The Place from Which Service is Controlled or Directed is in Utah.

If the individual has no base of operations or he does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

(c) The Place of Residence is in Utah.

If the conditions in paragraphs a or b do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Utah provided the individual lives in Utah and performs some of his services in Utah.

(2) If the conditions listed above do not apply, the employer may elect to cover all of the individual's service in one state. This election must be made under the provisions for reciprocal coverage arrangements Section 35A-4-106.

R994-204-204. Outside Commissioned Salesmen Included.

(1) General Definition.

Under certain conditions described in Subsection 35A-4-204(2)(a)(i), services performed by an individual are in covered employment, even though they would otherwise be excluded under Subsection 35A-4-204(2)(i)(i)(B), the "outside commissioned salesman exclusion."

(2) Traveling or City Salesmen.

Services performed by salesmen excluded under Subsection 35A-4-204(2)(i)(i)(B) are considered to be in covered employment if ALL of the following conditions apply:

(a) The Salesman is Engaged on a Full-Time Basis.

A traveling or city salesman will be presumed to be engaged on a full-time basis in any quarter in which he devotes 80 percent or more of his working time and attention to the solicitation of orders for one principal. For example, an individual who works only 20 hours a week and spends 80 percent or more of that time working for one principal is engaged on a full time basis.

(b) The Salesman Solicits Orders From Wholesalers, Retailers, Contractors or Operators of Hotels and Restaurants.

The salesman must solicit orders from certain types of customers. Generally, the following types of customers are not included: manufacturers, schools, hospitals, churches, institutions, municipalities and state and federal governments. However, a clearly identifiable and separate business carried on through a unit of the school's or hospital's organization such as a bookstore or gift shop WOULD BE included as a "retailer." The salesman must solicit orders from the following types of customers:

(i) Wholesalers. Those who buy merchandise in comparatively large quantities and sell such merchandise in smaller quantities to jobbers, retailers, for the purpose of resale.

(ii) Retailers. Those who sell merchandise to the ultimate consumers.

(iii) Contractors. Those who, for a fixed price, undertake the performance of work on an independent basis, such as construction contractors and certain service organizations. These include, among others, electrical, plumbing, painting, building, window washing and delivery service contractors.

(iv) Operators of hotels, restaurants or other similar establishments. The phrase "other similar establishments" refers solely to establishments similar to hotels and restaurants and usually is limited to establishments whose primary function is the furnishing of food and/or lodging.

(c) The Salesman Takes Orders for Merchandise for Resale or Supplies Used in Business.

The orders the salesman is soliciting must be for merchandise for resale or supplies for use in the customer's business.

(i) Merchandise for resale. This includes goods, wares and commodities which ordinarily are the objects of trade and commerce and which are purchased for resale. This term refers specifically to tangible materials which do not lose their identities between the time of purchase and the time of resale.

(ii) Supplies for use in the customer's business operations. This means principally articles consumed in conducting or promoting the customers' businesses. Generally the term "supplies" includes all tangible items which are not "merchandise for resale" or capital items. Services such as radio time, advertising space, etc., are intangible items and not within the definition. However, calendars, advertising novelties, etc., used by the advertiser in his business constitute "supplies."

(d) The Salesman Meets the Following Additional Requirements.

(i) The contract of service contemplates that substantially all of the services are to be performed personally by the individual. This means that the services to which the contract relates will not be delegated to any other person by the individual who undertakes under the contract to perform such services; and

(ii) The individual does not have a substantial investment in facilities used in connection with the performance of his services. The facilities include equipment and premises available for the work but does not include such tools and equipment or clothing as are commonly provided by employees; and

(iii) The services are part of a continuing relationship with the person for whom the services are performed.

R994-204-205. Domestic Service Included in Employment.

(1) General Definition.

Section 35A-4-204(2)(k) shows when domestic services, which are exempt under Subsection 35A-4-205(1)(f), become subject employment.

(2) $1000 in a Calendar Quarter.

Domestic service is in employment if performed after December 31, 1977, in a private home, local college club or local chapter of a college fraternity or sorority for a person who paid cash remuneration of $1000 or more in a calendar quarter in the current calendar year or the preceding calendar year.

(3) All Remuneration is Reportable.

Once the $1000 cash test is met, all remuneration including cash and noncash payments such as board and room are reportable as wages.

R994-204-301. Independent Contractor - General Definition.

In order for a personal service to be excluded under Section 35A-4-204(3) of the Act, the service must be performed by an individual who is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed, and the individual providing the services must be free from the control and direction of the employer with respect to that service. Those individuals who wish to be classified as independent contractors must clearly establish their status as independent contractors by taking affirmative steps that indicate an informed business decision has been made.

R994-204-302. Procedure.

(1) Section 35A-4-204(3) of the Act requires the employer to establish the excluded nature of the services "to the satisfaction of the Division".

(2) If the issue of an individual's status arises out of a claim for benefits, and there has been no prior status determination or declaratory order, a determination will be made on the basis of the best information available.

(3) If the issue of the status of an individual or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits, the Department shall determine the status on the basis of the information presented by the employer, the individual, or such other information as the Department may gather through audit or investigation. An individual who is found to be an independent contractor by reason of an audit or declaratory order is not permitted to waive any right to unemployment benefits by filing a written consent to the determination pursuant to Section 63-46b-21(3)(b) while the service relationship with the employer continues. Such written consent is in violation of Section 35A-4-103(1)(c)(ii) of the Employment Security Act.

(4) If the issue of an individual's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining that the individual or class of workers to which the individual belongs to be independent contractors, the Department will issue a monetary determination excluding the claimant's earnings as an independent contractor. The claimant has ten (10) days to protest the determination.

R994-204-303. Factors for Determining Independent Contractor Status.

(1) Services will be excluded under Section 35A-4-312 if the service arrangement meets the requirements of that section of the Act and this rule. Special scrutiny of the facts is required to assure that the form of a service arrangement does not obscure the substance of the arrangement; that is, whether the individual is independently established in a like trade, occupation, profession or business and is free from control and direction. The factors listed in subsections 303(2)b) and 303(3)(b) of this section are exclusive, but are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the occupation and the factual context in which the service is performed. Some factors do not apply to certain occupations and, therefore, should not be given any weight.

(2) Independently Established.

(a) An individual will be considered customarily engaged in an independently established trade, occupation, profession, or business if the individual is, at the time the service is performed, regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed, and the trade, occupation, profession, or business is established independently of the alleged employer. In other words, an independently established trade, occupation, profession, or business is created and exists apart from a relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence.

(b) The following factors, if applicable, will be used as aids in determining whether an individual is customarily engaged in an independently established trade or business:

(i) Separate Place of Business. The individual has his own place of business separate from that of the employer.

(ii) Tools and Equipment. The individual has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. "Tools of the trade" such as those used by carpenters, mechanics, and other trades or crafts, do not necessarily demonstrate independence.

(iii) Other Clients. The individual regularly performs services of the same nature for other customers or clients and is not required to work full time for the employer.

(iv) PROFIT OR LOSS. The individual is in a position to realize a profit or loss through his independently established business activity.

(v) Advertising. The individual advertises his services in

telephone directories, newspapers, magazines, or by other methods clearly demonstrating that he holds himself out to the public to perform the services.

(vi) Licenses. The individual has obtained any required and customary business and trade or professional licenses.

(vii) Business Tax Forms. The individual files self-employment and other business tax forms required by the Internal Revenue Service and other tax agencies.

(c) If an employer proves to the satisfaction of the department that the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service.

(3) Control and Direction.

(a) When an employer retains the right to control and direct the performance of a service, or actually exercises control and direction over the individual who performs the service, not only as to the result to be accomplished by the work but also as to the manner and means by which that result is to be accomplished, the individual is an employee of the employer for the purposes of the Act.

(b) The following factors, if applicable, will be used as aids in determining whether an employer has the right of or exercises control and direction over the service of an individual:

(i) Instructions. An individual who is required to comply with other persons' instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

(ii) Training. Training an individual by requiring an experienced person to work with the individual, by corresponding with the individual, by requiring the individual to attend meetings, or by using other methods, indicates that the employer for whom the service is performed expects the service to be performed in a particular method or manner.

(iii) Pace or Sequence. A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction, but the coordinating and scheduling of the services of more than one service provider does not.

(iv) Work on Employer's Premises. A requirement that the service be performed on the employer's premises generally indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

(v) Personal Service. A requirement that the service must be performed personally and may not be assigned to others generally indicates the right to control or direct the manner in which the work is performed.

(vi) Continuous Relationship. A continuous service relationship between the individual and the employer indicates that an employer-employee relationship exists. A continuous relationship may exist where work is performed regularly or at frequently recurring although irregular intervals. A continuous relationship generally does not exist where the individual is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.

(vii) Set Hours of Work. The establishment of set hours of work by the employer, or a requirement that the individual must work full-time, indicates control.

(viii) Method of Payment. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job.

R994-204-401. Safe Haven - General Definition.

The Administrative Procedures Act, Section 63-46B-21, permits any person to request that the Department issue a declaratory order determining the applicability of the Employment Security Act, a Commission rule, or order, to specific circumstances. Specifically, an employer may request a declaratory order determining the status of workers; that is, are they employees or independent contractors. Declaratory orders and audit findings determine only whether the employer is liable to pay contributions on wages paid to the workers in question. The "safe haven" provision provides a means by which the employer may rely on official determination of the Department pertaining to the applicability of Section 35A-4-204(3) of the Act. The provision allows the employer to obtain an official determination for contributions purposes, while preserving the worker's right to challenge that determination at a more appropriate time, when the work relationship has ended and a claim for benefits has been filed.

R994-204-402. Procedure.

(1) If the issue of the status of an individual or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits pending at the time, the Department shall determine the status on the basis of the information presented by the employer, the individual, or such other information as the Department may gather through audit or investigation.

(2) An individual whose status is determined as a result of an audit or declaratory order shall not be permitted to file a written consent to the determination pursuant to Section 63-46B-21(3)(b) while the service relationship with the employer continues, and the Department will consider such a consent to be in violation of Section 35A-4-103(1)(c)(ii) of the Employment Security Act.

(3)(i) If the issue of an individual's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining the status of the individual or a class of workers to which the individual belonged, the Department will issue a notice as part of the monetary determination, denying use of the individual's independent contractor earnings as wage credits for the base period, on the basis of the prior status determination. The individual may file a written protest of the determination within 10 days after the local office has notified him of the determination. Any protest will be referred to Central Office Claims for review.

(ii) Upon receipt of a protest filed under Section 402(3)(i), the Department will review the status of the individual. On the basis of its review, the Department may affirm the original determination or issue a new determination if there has been a

change of facts in the work relationship. Either the individual or the employer may appeal the Department's decision.

R994-204-403. Employer Reliance on Official Determination.

When an employer receives a declaratory order or other official determination concluding that a worker or class of workers appears to be customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of hire, and is free from the control and direction of the employer, the employer shall have no liability to pay unemployment contributions on compensation paid to the worker, except as provided in Section 404 of this rule.

R994-204-404. Effect of New Determination on Employer.

If a new determination by the Department, an Administrative Law Judge, or the Board of Review holds that the status of an individual or class of workers to which the individual belonged is that of employee for purposes of the Employment Security Act, the employer shall be liable to pay unemployment contributions on all wages paid to workers in the class to which the individual belonged, from the beginning of the calendar quarter in which the new determination is made. In addition, the employer shall also be liable to pay contributions on any wages used by a claimant for purposes of establishing any claim for benefits affected by the new determination.

KEY: unemployment compensation, employment tests, independent contractor*
November 18, 1996 35A-4-204
Notice of Continuation April 4, 2000

R994. Workforce Services, Workforce Information and Payment Services.

R994-307. Social Costs -- Relief of Charges.

R994-307-101. Relief of Charges to Contributing Employers.

(1) Under the following circumstances a written request is required for relief of charges:

(a) Separation Issues.

(i) Relief may be granted based only on the circumstance which caused the claim to be filed or a separation which occurred prior to the initial filing of the claim. If there is more than one reason for separation from the same employer, charges or relief of charges will be based on the reason for the last separation occurring prior to the effective date of the claim. Separations occurring after the initial filing of a claim do not result in relief of charges on that claim, but may be the basis for relief of charges on a subsequent claim.

(A) The claimant voluntarily left work for that employer due to circumstances which would have resulted in a denial of benefits under Subsection 35A-4-405(1) of the Act.

(B) The separation from that employer would have resulted in an allowance of benefits made under the provisions of "equity and good conscience" under circumstances not caused or aggravated by the employer. For example: If the claimant quit because of a personal circumstance which was not the result of this employment the employer would be relieved of charges. However, if the quit was precipitated by a reduction in the claimant's hours of work, even though the change in working conditions was necessitated by economic conditions, the employer would NOT be relieved of charges.

(C) The claimant quit that employer for health reasons which were beyond reasonable control of the employer. Although the job may have caused or aggravated the health problems, the employer is eligible for relief if it was in compliance with industry safety standards.

(D) The claimant quit work for that employer not because of adverse working conditions, but solely due to a personal decision to accept work with another employer.

(E) The claimant quit work from that employer for personally compelling circumstances not within the employer's power to control or prevent.

(F) The claimant was discharged from that employer for circumstances which would have resulted in a denial of benefits under Section 35A-4-405(2) of the Act.

(G) The claimant was discharged for nonperformance due to medical reasons. The employer is eligible for relief:

(I) only if the employer complied with industry health and safety standards, and

(II) the non-performance was due to a chronic medical condition, and

(III) the medical circumstances are expected to continue. The medical problems may be attributed to the worker or to a dependent. A series of unrelated absences attributed to medical problems do not qualify as chronic without medical verification that the conditions will probably continue to cause absences.

(H) The claimant continued to work for an acquiring employer when a portion of the business assets was sold or transferred to another business entity. For the purpose of this rule, employees are not considered assets and there must be an actual sale or transfer of business assets. Because the selling employer lost control of the employees to the acquiring employer, the selling employer may be eligible for relief of charges. Such relief may be sought by a timely written request following the claimant's subsequent claim for benefits. "Continued to work for the acquiring employer" means the claimant began work as soon as work was available with the acquiring employer.

(b) Non-Separation Issues.

(i) The claimant's customary hours of work with the concurrent employer, even though not necessarily constant have not been reduced either during the base period or prior to the filing of the claim below the least number of hours worked during the base period. For this circumstance to exist, the claimant must have worked for two or more employers during the base period of his claim, and when separated from one of the employers, he continues to work less than full-time for the other employer. Only the part-time employer can be relieved of benefit costs under the provisions of this section.

(ii) The employer was previously charged for the same wages which are being used a second time to establish a new claim. For example, as the result of a change in the method of computing the base period, or overlapping base periods due to the effective date of the claim.

(iii) The claimant did not work for the employer during the base period.

(iv) The Department incorrectly used wages which were or should have been correctly reported by the employer in determining the claimant's weekly benefit amount or maximum benefit amount.

(c) The Department may, on its own motion, grant relief of charges without a written request if in the Department representative's discretion there is sufficient information in the record to justify relief.

(2) Under the following circumstances a written request is NOT required for relief of charges:

(a) All employers shall be relieved of benefit costs:

(i) resulting from the state's share of extended benefit payments;

(ii) which, during the same fiscal year, have been designated by the Department as benefit overpayments;

(iii) resulting from combined wage claims that are charged to Utah employers, which are insufficient when separately considered for a monetary claim under Utah law but have been transferred to a paying state;

(iv) resulting from payments made after December 31, 1985 to claimants who have been given commission approval to attend school. Relief is granted only for those benefit costs during the period of commission approval.

(b) An employer shall be relieved of benefit costs if the employer has terminated coverage.

KEY: unemployment compensation, rates
June 17, 1996 35A-4-303
Notice of Continuation June 12, 1998

R994. Workforce Services, Workforce Information and Payment Services.
R994-308. Bond or Security Requirement.
R994-308-101. General Definition.

To ensure compliance with the contribution provisions of the Act, the Department may require an employer to provide a bond or other security deposit under Section 35A-4-308(1). This rule describes the types of deposits, the conditions under which a deposit may be required, how the amount of the deposit is determined and the disposition of the deposit.

R994-308-102. Types of Deposits.

A cash deposit will generally be required; however, at the Department's discretion other forms of security may be accepted.

R994-308-103. Reasons for Requiring a Deposit.

(1) A security deposit may be required whenever circumstances would reasonably cause doubt as to an employer's future compliance with the contribution provisions of the Act. Failure to comply includes such things as failing to file reports, pay contributions, file a wage list or comply with other requests made by the Department. Some of the more common reasons for requiring a deposit are the following:

(a) the employer's past failure to comply;

(b) the employer is an out-of-state employer and has workers in Utah;

(c) the employer is in an industry where the rate of past failure to comply is high;

(d) the employer's or principal's past failure to comply in other businesses with which he is or has been affiliated; and

(e) the employer is a leasing employer or temporary services employer and the potential for a negative impact on the trust fund is greater due to the fact that the responsibility for the payment of contributions rests with one employer rather than all the employer's clients.

R994-308-104. Amount of Deposit.

When a cash deposit is required, such deposit shall be a minimum of $100 and shall not exceed an amount equal to three times the quarterly contribution liability currently accruing or expected to accrue.

R994-308-105. Disposition of Deposit.

If after the employer makes the required deposit he fails to comply with the Act, the Department will use the cash deposit or the proceeds from the sale of the bond or security to pay contributions, interest and penalties due as defined by Subsection R994-302-103(4). The Department may then require a new deposit.

R994-308-106. Interest Earned on Cash Deposits.

Interest earned on cash deposits will be paid into the same fund as other interest and penalties collected by the Department as provided by Subsection 35A-4-305(1)(e).

KEY: unemployment compensation, bonding requirements
1991 35A-4-308(1)
Notice of Continuation June 14, 1996

R994. Workforce Services, Workforce Information and Payment Services.

R994-403. Claim for Benefits.

R994-403-101a. Timely Filing - General Definition.

The following rules define the procedures for filing new and continued claims or for reopening claims. These rules also determine how the effective date of the new or reopened claim is established as well as circumstances under which a claim may be canceled.

R994-403-102a. Filing a New Claim.

(1) Effective Date of a New Claim.

When a claimant believes he may be entitled to unemployment insurance benefits, it is his responsibility to file a claim during the week he desires to claim the benefits, not after the week has passed. Backdating prior to the week of filing will be allowed only if good cause can be established in accordance with Section R994-403-107a, and Subsections 35A-4-403(1)(a) and 35A-4-406(1)(a). The effective date of the new claim establishes the period of time during which wages can be used for determining the monetary entitlement, and in the case of law changes, the laws under which eligibility is determined. A claim for benefits or waiting week credit shall be filed as follows:

(a) An individual must contact the claim center to file a claim for benefits.

(b) The effective date of the claim for benefits shall be the Sunday immediately preceding the date the claim is filed, provided that during that week the claimant is not entitled to earnings in excess of his weekly benefit amount. An exception to this rule may be made if the claimant can show it is more advantageous to have his claim effective the week in which he reported

(2) Filing a New Claim by Mail.

The Department may allow registration for work and claim filing by mail. If an individual completes and mails the forms as instructed, no later than twelve days following the date upon which they were mailed, as established by a postmark, his claim shall be effective the Sunday immediately preceding the date the request was made. If he fails to complete and mail his claim forms within the period prescribed above, his claim shall be effective on the Sunday immediately preceding the date the forms are received by the Department, provided, however, if good cause is established for the delay in accordance with Section R994-403-107a, the Department may permit an effective date as provided above.

(3) Social Security Number and Proof of Identity.

Unemployment insurance claims are identified by a claimant's social security number. A claimant filing a new claim for benefits shall be required to provide his social security number and proof of identity. Acceptable proof of identity will generally not be established without two reliable forms of identification. Failure to provide sufficient proof of identity or a social security number within three weeks of the effective date of the claim shall result in a denial of benefits in accordance with Subsection 35A-4-403(1)(e) of the Act.

R994-403-103a. Cancellation of Claim.

(1) Once a weekly claim has been filed and a monetary determination has been issued, the claim is considered to have been established even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah. However, a claim may be canceled if the claimant submits a written request to cancel the claim and he can show one of the following circumstances:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant either returns any warrants that have been issued or he makes full repayment of benefits paid;

(d) the claimant had earnings equal to or greater than his weekly benefit amount in the form of severance or vacation payments applicable to all weeks for which claims were filed;

(e) the claimant returned to work and reported earnings equal to or greater than his weekly benefit amount applicable to all weeks for which claims were filed;

(f) the claimant meets the requirements for filing a new claim under the Worker's Compensation provision of Section 35A-4-404 or meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(g) the claimant meets the requirements for cancellation established under the provisions for combined wage claims; or

(h) the claimant has filed a UCX claim, unemployment compensation for ex-military, and it is determined he does not have wage credits under Title 5, chapter 85, U.S. Code.

R994-403-103f. Monetary Eligibility Requirements- General Definition.

Generally, claimants must have earned base period wages of 1 and 1/2 times the high quarter wages plus a minimum dollar amount. If the claimant is not monetarily eligible under the 1 and 1/2 times requirement, but meets the monetary base period wage requirement as defined in Section 35A-4-202 of the Act, the claimant may establish that he was paid wages for the insured work in at least 20 weeks during the base period with earnings of not less than 5 percent of the monetary base period requirement for each week. The requirement in the Act that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in Section R994-401-204.

(1) Timeliness.

To preserve the original effective date of the claim, the claimant will have 10 days from the date of the notice of "Determination of Benefit Amount" plus three days if the determination is mailed, to make a written request for revision and to show that he has 1 and 1/2 times the base period wages or meets the alternative requirement of monetary eligibility consistent with Section R994-401-204. If a timely protest is not made, the claimant must establish good cause for failing to request a monetary determination recomputation within these time limitations to have the monetary determination recomputed or establish eligibility for a recomputation as provided by R994-406-305. If good cause cannot be shown, the claim will become effective on the Sunday of the week in which a new claim is

filed and the claimant is able to show eligibility under the 20 week standard.

(2) Monetary Base Period.

The monetary base period wage is established by the Department for each calendar year. The Department publishes that amount in the Benefit Schedule which is given to claimants when they file an initial claim. The calculation is made in accordance with Section 35A-4-202 of the Act. The dollar amount for each of the 20 weeks required to establish eligibility will be determined by the calendar year in which the initial claim is filed.

(3) Claimant Responsibility.

When the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, it becomes the claimant's responsibility to show that he has 20 weeks of covered employment which meet the minimum dollar amount.

(4) Acceptable Proof of 20 Weeks of Covered Employment.

Acceptable proof shall include:

(a) Appropriately dated check stubs issued by the employer;

(b) A written statement from the employer showing dates of employment and the amount of earnings for each week;

(c) Time cards;

(d) Canceled payroll checks; or

(e) Personal or business records kept in the normal course of employment that would substantiate work and earnings.

R994-403-104a. Closing a Claim.

(1) A claim for benefits may be considered "closed" when a claimant:

(a) reports he is permanently back to work,

(b) is denied benefits for more than one week,

(c) discontinues filing weekly claims,

(d) reports relocation to an area served by a different local office,

(e) exhausts his rights under a specific benefit program,

(f) reports four consecutive weeks of earnings in excess of his weekly benefit amount, or

(g) has been notified to provide information and fails to report as instructed.

R994-403-105a. Reopening a Claim.

(1) A claimant may reopen his claim any time during the 52-week period after first filing, by following procedures outlined in Section R994-403-102a. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant reports unless good cause is established for failure to report during a prior week in accordance with Section R994-403-107a.

(2) Proof of identity shall be required when reopening a claim as prescribed under Subsection R994-403-102a(3).

R994-403-106a. Filing Weekly Claims.

(1) The claimant is solely responsible for filing weekly claims. To maintain continuing eligibility for benefits an individual shall file weekly claims in person, by mail or by telephone in accordance with instructions from the Department.

(2) Time Limit for Filing Telephone Claims.

Each claim should be filed as soon as possible after the Saturday week ending date. The Department will permit a period of 20 days after the week ending date to file a timely claim by telephone. A telephone claim filed 21 or more calendar days after the week ending date shall be denied unless good cause for late filing is established in accordance with Section R994-403-107a.

(3) Time Limit for Filing Bi-Weekly Claim Cards.

If filing by mail or in person through a local office, each week of the bi-weekly claim card shall be considered separately to determine if it has been filed timely. The card must be received by the Department within 20 days from the week ending date of week one in order for week one to be considered timely. Both week one and week two will be considered late if the bi-weekly card is received by the Department 21 or more calendar days after the week ending date for week two.

(4) When circumstances prevent the preparation of the bi-weekly claim card by the Department prior to the week ending date of week two, the print date of the claim card, rather than the week ending date is then reviewed to determine timeliness. Both week one and week two shall be considered late if received 21 or more calendar days after the print date.

R994-403-107a. Good Cause for Late Filing.

(1) A claimant has the duty to establish, by competent evidence, that good cause existed for not claiming benefits as prescribed. The Department has a responsibility to NOT apply excessive harshness or technicality in determining good cause. Some reasons for the time limitations on filing claims with respect to the claims filing process are:

(a) to pay the first claim in a prompt manner consistent with federal payment standards,

(b) to pay benefits in a sequential manner,

(c) to monitor the claim for potential violations of eligibility requirements, or

(d) to allow a claimant to correctly respond to the questions on his claim with respect to the week for which the claim is filed.

(2) Good cause for late filing will generally be established by evidence a claimant was prevented from filing a timely claim. The proof of inability to properly file may establish unavailability for work. Some examples that may establish good cause for late filing but may raise an availability issue are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed,

(b) hospitalization or incarceration,

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim, and

(d) failure of the Department to discharge its responsibilities promptly in connection with a claim.

(3) Some examples of reasons for late filing that may NOT be considered good cause are:

(a) failure to affix correct postage or otherwise properly mail the claim, including placing for mailing somewhere other than in an approved Postal Service mail box or mail drop,

(b) failure to mail the claim far enough in advance to reasonably insure delivery to the Department within the allowable time frame,

(c) delegation of the mailing or filing responsibility to

another person,

(d) procrastination for non-compelling reasons,

(e) misplacing the claim, the claim filing telephone number or Personal Identification Number (PIN),

(f) vacation,

(g) temporary or minor illness,

(h) transportation problems,

(i) failure to notify the Department of the proper name, address or an address change, and

(j) failure to properly label a personal mail box to insure mail delivery, and

(k) reliance upon inaccurate advice from friends, relatives, other claimants or similar sources as the Department is, and shall remain, the only acceptable source of information about unemployment insurance.

R994-403-108a. Time Limitation on Backdating.

No claim may be backdated if filed over 65 weeks following the date of separation.

R994-403-109b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant shall register for work at an Employment Center unless, at the discretion of the Department, registration is waived or deferred. Thereafter, he must continue to report, as required by the Department.

(2) Failure, without good cause, to register for work or to report to the Department, when required, may result in a denial of benefits. Good cause for failure to register for work or to report to the Department when required will be established by evidence that the claimant was prevented from registering or reporting. The proof of inability to register or report may raise an availability issue.

R994-403-110b. Job Search Workshops and Conferences.

The Department may require attendance at special conferences or workshops designed to assist claimants with job seeking skills, developing resumes, telephone usage, personal interviewing techniques, and other, necessary skills. Failure, without good cause, to participate in a Job Search Workshop or other required conference may result in a denial of benefits in accordance with Section R994-403-109b. The denial will begin with the week the claimant failed to attend the workshop or conference and ends with the week he contacts the Department and schedules an appointment to attend the next available session.

R994-403-111b. Deferral of Work Application.

(1) The Department may elect to defer the work registration requirement. If a claimant is placed in a deferred status, he is not required to actively seek work, but must meet all other availability requirements of the Act. Employers shall be notified when former employees filing for benefits are not required to seek work with other employers. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

If a claimant is unemployed due to a labor dispute, he may have his work application deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, he must register for work immediately.

(b) Union Attachment.

If a claimant is a union member in good standing, is on the out of work list or otherwise eligible for referral to union work and has received substantially all his base period employment through the union, he may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate he has a reasonable expectation of obtaining employment through the union.

(c) Employer Attachment.

If a claimant is attached to a regular employer with a definite date of recall, he may have his work registration deferred to the date of recall. However, the deferral should not extend beyond the mid-point of a claim or for more than ten weeks.

(d) Three Week Deferral.

A claimant who obtains an offer of full-time work to begin on a definite date within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in his established, base period occupation, if other suitable work is not available in the area.

R994-403-112b. Four Week Delayed Work Registration.

A new claimant may be given the option, at the discretion of the Department, to delay completion of the department's work application until the fifth consecutive week of filing. However, claimants are required to actively seek work each week. A claimant who wishes to complete a work application when filing a new claim may do so. A claimant whose work application is not otherwise deferred, must register for work during the fifth week of eligibility.

R994-403-113b. Not Eligible for Deferral.

There are specific groups of claimants who may not have their work applications deferred. Claimants who are filing for special federal benefits that require a work search are not eligible for deferrals unless Department approval for training has been granted.

R994-403-114b. Profiled Claimants.

(1) Individuals who are likely to exhaust unemployment benefits will be identified through a profiling system and required to participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) To be excused from reemployment services, the claimant must show:

(a) that he has completed equivalent services within the twelve month period immediately preceding the date he is scheduled for reemployment services; or

(b) that he had justifiable cause for not participating in reemployment services. Justifiable cause is established if the claimant's failure to participate is reasonable for the circumstance or beyond his control.

(3) Failure to participate in reemployment services without justifiable cause will result in a denial of benefits beginning

with the week the claimant refuses or fails to attend scheduled services and continuing until the week he contacts the Employment Center to arrange participation in the required reemployment service.

(4) A claimant who fails to participate in reemployment services will have his availability for work evaluated under the rules of Subsection 35A-4-403(1)(c).

R994-403-115c. Able and Available - General Definition.

The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other criteria established for eligibility but, if he cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed. A principal requirement of the Employment Security Act is that the claimant must be attached to the labor force. This means the claimant can have no encumbrances to immediate acceptance of full-time work. He must be actively engaged in efforts to obtain employment. He must have the necessary means to become employed including tools, transportation, licenses, and child care. He must desire to obtain employment. The main reason for his continued unemployment must be the lack of suitable job opportunities. There is a presumption of non-availability when an individual voluntarily leaves work, has physical or mental restrictions, or is otherwise responsible for becoming or remaining unemployed. The only exception to the requirement to be available for, actively seeking and able to accept work is established under Subsections 35A-4-403(2)(a)and 35A-4-403(2)(b) for Department Approval, which defines availability for those in approved schooling in other terms.

R994-403-116c. Able.

(1) Physical or Mental Impairments.

The claimant has the responsibility to show that he has no physical or mental impairments which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his last employment, there is a presumption of inability to work which must be overcome by competent evidence that there is some reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(a) Past Work History.

If an individual earned his base period wages while working with a physical or mental impairment, and is otherwise eligible, and is willing to accept any work within his ability and is actively seeking that work, his unemployment is due to lack of employment opportunities and not due to inability to work. Under these circumstances, benefits should not be denied solely on the basis of the physical or mental disability.

(b) Medical Verification.

When an individual has a physical or mental impairment, medical information from a health care specialist is one form of evidence used to determine the claimant's ability to work. The competent specialist's recommendations are presumed to be accurate with regard to the claimant's ability to work; however, the claimant may overcome the opinions of specialists by showing other evidence that the impairment does not interfere with ability to work. If the claimant is not currently under professional care, verification may not be required.

(2) Temporary Disability.

A claimant's ability to work may be affected any time there is an illness or injury that is expected to continue for a short period of time.

(a) Medical Absence from Work.

A claimant is not eligible for benefits if he is not able to work at his regular job due to a temporary disability provided the employer has agreed to allow him to return to his job when he is able to do the work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work he is capable of performing with his disability.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he is again able to work, or his temporary disability occurred after he became unemployed, benefits may be allowed even though he cannot work in his regular occupation provided he can show there is work he is capable of performing, and for which he reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(3) Hospitalization.

While a claimant is hospitalized, he is not able to work unless the hospitalization is on an out-patient or residency basis and there is professional verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation or adjustment.

(4) Workers' Compensation.

(a) Compensation for Lost Wages.

A "Temporary Total" award of workers' compensation is made initially to replace lost wages based on a conclusion that the individual is unable to work. If the claimant has been granted an award based on his contention or medical verification that he is unable to work, eligibility for unemployment insurance benefits cannot be established. When the claimant is no longer entitled to a Temporary Total award he must file his unemployment insurance claim within 90 days after he is released for work to establish a claim using wage credits earned prior to the injury. Section 35A-4-404 details claimant eligibility for benefits after receiving workers' compensation or occupational disease compensation. He will not be considered able to work without a medical release or other evidence that he is able to perform full-time work.

(b) Subsequent Awards.

The worker may subsequently receive a "permanent partial" or "permanent total" award under the state workers' compensation laws. A claimant may be eligible for unemployment insurance benefits while receiving an award if he can show he is able and available to perform any full-time work which he reasonably could expect to obtain even though he has a physical or mental impairment. However, the receipt of such an award may raise a presumption of non-availability, which is determined consistent with the preceding provisions dealing

with physical or mental impairments. Disability payments are not reportable as wages under Subsection 35A-4-401(3).

R994-403-117c. Available.

(1) General Requirement.

The primary obligation of a claimant is to be available for full-time work. Any restrictions on availability, whether self-imposed or beyond the control of the claimant, lessen his opportunities to obtain or accept suitable work. When a claimant was recently employed under restrictive conditions and is unemployed for some other reason, the claimant shall initially be considered available without regard to that restriction. However, a claimant cannot continue to restrict his availability to certain hours, types of work, rate of pay, or conditions not usual or customary in his occupation, trade, or industry and still maintain his eligibility for benefits. The claimant must be available for any work which meets the suitable work test as defined in Subsection 35A-4-405(3) and Section R994-405-309.

(a) Requirement for Modification of Restrictions.

The number of weeks permitted before restrictions, beyond what is customary for the occupation, must be modified will depend upon: prospects of employment, severity or number of restrictions, extent of work search efforts, and the average time required to become reemployed considering the entire labor market and the specific occupation. Other types of restrictions which could interfere with reemployment include residence outside the normal service area of an Employment Center, lack of transportation, domestic problems, school attendance, military obligations, church or civic activities. When modifications of restrictions are required, the claimant shall be expected to contact employers and make work applications consistent with the modifications to enhance employability. Necessary changes will also be made on his Employment Center work application to facilitate referrals to prospective employers.

(i) At least four weeks shall be allowed during which the claimant may restrict his availability to work consistent with the base period employment which was most advantageous to him before modifications of restrictions would be required. During the fifth week of the claim, if a restriction contributes in any way to the continuing unemployment, the claimant shall be advised by a Department representative that he has restrictions that reduce his chances of becoming employed and adjustments will be required to maintain eligibility. Failure to follow reasonable advice from the representative may result in a conclusion of non-availability.

(ii) The maximum number of consecutive weeks that a claimant may be eligible for benefits while having restrictions, beyond those customary in the occupation, shall be half the number of weeks of his claim.

(2) How Use of Time Affects Eligibility.

A claimant cannot be considered as meeting the requirement of being available for work if he is involved in any activity which precludes acceptance of employment. It is not the intent of the Act to subsidize vacations, personal pursuits, no matter how compelling, or other leisure time activities that would in any material way interfere with immediate reemployment. While it is not expected that a claimant will be confined to his home or telephone at times not actually engaged in work seeking activities, a claimant shall not be considered available for work if he is precluded for any reason from accepting work. Examples of activities which preclude a claimant from accepting work include: absence from the area where he is living or willing to accept employment, hospitalization, illness, incarceration, vacation, time spent in conjunction with funerals or other family gatherings, or time spent on any activity which cannot be immediately abandoned or interrupted to seek and accept work.

(a) Rebuttable Denial of Benefits.

Any activity which occupies the claimant for more than 24 consecutive hours during his normal working days, shall be presumed to adversely affect the claimant's opportunities to seek and accept employment and therefore he shall be determined ineligible for benefits. Days customarily worked in the claimant's occupation includes as appropriate, weekends and holidays, or business days which are Monday through Friday. Activities which may adversely affect opportunities to obtain employment include travel, incarceration, illness, hospitalization, self-employment, civic or church activities, or any other leisure time activity that would interfere with immediate reemployment. This presumption can be overcome by a showing that the activity did not preclude offers of work, referrals to work, contacts from an Employment Center, or an active search for work. For example, if the claimant had been in contact with an employer and was told that he would be called, it must be presumed that if the claimant was absent from his residence beyond what is usual for daily activities, he may have missed an offer of work. Unless the employer verifies that no attempt was made to contact the claimant, benefits will be denied. However, when a claimant is away from his residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of non-availability may be overcome. The conclusion of non-availability may also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

If it is necessary to travel to seek work, the travel is not delayed and primarily for the purpose of applying for or accepting a job, such travel shall not result in a denial of benefits regardless of the number of days required for the trip.

(ii) Definite Offer of Work or Recall.

If the claimant already had, or obtained a definite offer of full-time employment or date of recall to begin within three weeks, he has demonstrated his attachment to the labor market and accomplished the purpose of the work search. Therefore, he does not have to demonstrate further availability provided there is no reasonable expectation that the date of hire will be changed. He is no longer required to seek other work. Therefore, in this limited circumstance, if being away for short periods of time or otherwise removing himself from the labor market does not adversely affect his reemployment, benefits may be allowed provided he has made arrangements to be contacted. Benefits shall nevertheless be denied for a week of substantial illness or hospitalization because the statute requires that a claimant be able to work.

(iii) Jury Duty or When Court Attendance is Required.

If a claimant is not available to seek or accept work because he is before any court due to a lawfully issued summons where he is neither a defendant or a plaintiff, or his presence is

required by the court for jury duty, he will not be denied benefits. Since jury service or court attendance is a public duty required by law, an otherwise eligible claimant will be considered available for work unless he has employment which he is unable to continue because of his court duties, or is offered available, suitable employment, which he refuses or delays because of his court service. The time spent in court service is not a personal service performed under a contract of hire in an employment situation; therefore, even though it involves an individual's full time, he is not considered employed.

(b) Non-Rebuttable Denial of Benefits.

(i) Refusal of Work.

A claimant generally demonstrates that he is not available for work if there is any suitable work he does not or cannot accept. If he was not available for work, even though he had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work could have been performed. Benefits would also be denied when a claimant fails to be available for job referrals or a call to work under reasonable conditions consistent with a previously established work relationship. Examples of when this would apply include referral attempts from: a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because he was not able or available to do his work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during his last week of employment and he was not paid for the day(s) of absence, benefits will be denied for that week. The claimant will be denied benefits under this Section regardless of the length of the absence.

(iii) Hours of Availability.

(A) Full-Time.

To meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week, but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(B) Full-Time Work for Permanently Disabled Claimants.

If a claimant has an actual physical limitation and therefore is available for less than the customary full-time hours of work, all of the following circumstances would have to be met before the claimant could be considered available for work as required for eligibility:

(1) The claimant must be able to work, but must have an actual involuntary physical limitation. There must be substantial evidence of the nature, duration, prognosis and severity of the medical limitation to establish that it clearly leaves the claimant incapable of customary full-time hours of work. A limitation of hours caused by other than physical limitation may not be considered; and

(2) The prior work must have been substantial in amount but part-time, at least throughout the claimant's base period. "Substantial" is defined as over 50 percent of the hours customarily worked in the occupation. It must have been part-time because of the physical limitations as described in the preceding paragraph; and

(3) An active local market of employment must exist for workers in claimant's occupation under the conditions within which the claimant is capable of working; and

(4) The claimant must be making a current active personal search for work.

(c) Other Than Normal Working Hours.

If the claimant worked for an employer under other than normal working hours and the adjustment was made to accommodate the peculiar circumstances of the claimant, availability for normal full-time work as defined for the industry is not established, even though the hours previously worked by the claimant may have been 40 or more.

(4) Wage Restrictions.

(a) No claimant will be expected as a condition of eligibility to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than wages prevailing for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself to a wage that clearly is not available. The following are the limits that a claimant may place on his wage demands while maintaining eligibility:

(1) At the initial time of filing the claimant may not restrict his wage requirements to an amount greater than the highest wage earned during his base period or the highest wage available in the locality, whichever is lower, and there must be some reasonable expectation that work can be obtained at that wage.

(2) After four consecutive weeks of filing the claimant may be instructed by a Department representative that he must be available for any wage earned during the base period of the claim, if the highest wage earned during the base period is not reasonably available.

(3) When the claimant has been filing continuously for a period of time equal to 1/3 of the maximum number of weeks of his entitlement, he cannot require a wage higher than the lowest wage he earned during his base period.

(4) After filing continuously for 1/2 of his weeks of entitlement, he must be willing to accept a 10% reduction from the lowest base period wage if his wage requirement is higher than the prevailing wage for his occupation because it shall be concluded that his continued unemployment is at least in part due to his wage demand. He must also gradually make additional reductions in his wage demand as necessary to reach a wage demand equal to the prevailing rate for similar work in the locality by the time he has filed continuously for 2/3 of his weeks of entitlement.

(5) After filing continuously for 2/3 of his weeks of entitlement, a claimant must be willing to accept the prevailing wage for similar work in the locality.

(6) When a claimant reopens a claim after employment, he must be willing to accept the wage last earned and make

additional reductions as required after continuous weeks of filing. If the claimant has had intervening employment at the higher wage, the wage reductions will not be required until he has received those portions of his benefits in consecutive weeks of filing.

(b) Evidence of the claimant's compliance with this requirement will be shown by the wage the claimant indicates as acceptable on work applications when applying for work with prospective employers, or on work applications with Employment Centers.

(c) Exception for Deferred Claimants.

The provisions of this section shall not apply to those claimants who qualify for deferrals as explained in the Subsection 35A-4-403(1)(b) and R994-403-203.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant to preserve his highest skill by providing an income during a period of unemployment during which the claimant can seek work similar to that which he had prior to becoming unemployed. A skill is defined as a marketable ability which was developed over an extended period of time by training or experience that could be lost if not used. It is not the intent of the program to subsidize individuals who wish to improve their employment status. The following are the limits that a claimant may place on the type of work he is willing to accept and maintain eligibility:

(1) At the time of filing an initial claim or reopening a claim following employment, a claimant may restrict his availability to the highest skilled employment performed during his base period provided he has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with that performed during the base period must show some compelling reason for that restriction in order to be considered available for work.

(2) After the claimant has filed continuously for 1/3 of his weeks of entitlement, a claimant shall not be eligible for benefits unless he is willing to accept work in all the occupations in which he worked during the base period of his claim. However, the Department representative may advise the claimant after four consecutive weeks of continuous filing that his work search needs to be expanded to include other base period occupations.

(3) After the claimant has filed continuously for 2/3 of the weeks of his entitlement, availability is not demonstrated unless the claimant is willing to accept work in other occupations that he is reasonably fitted to perform by past experience or training or to which his skills could logically be transferred.

(b) Contract Obligation.

If a claimant is restricted due to a contract obligation with a former employer from competition with or acceptance of employment in the claimant's regular occupation, the claimant would not be eligible for benefits unless he can show that there is another occupation for which he has sufficient skills or training in which he could reasonably obtain employment, and he is actively seeking that type of work.

(c) Restriction to Former Employer.

If a claimant is not willing to consider or accept work except with a former employer and does not have a definite date of recall within the period of time during which a deferral could be granted in accordance with Subsection 35A-4-403(1)(b) or Section R994-403-203 he cannot be considered available for work. One indication of the claimant's restriction to a former employer is a failure to actively seek other permanent employment. However, the claimant may be eligible for benefits even though he chooses to remain available for recall to a former employer and does not qualify for a deferral if he is actively seeking temporary work which he reasonably could obtain. Such temporary work may have to be in a different occupation and at a lower rate of pay. Therefore, the claimant will have to make such adjustments in his attitudes and on work applications to establish eligibility.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment customarily required for the type of work he wants to obtain, the claimant cannot be considered available for work unless there are other types of work which he is actively seeking and has a reasonable expectation of obtaining, based on his skills and abilities.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept, and is actively seeking temporary work. The claimant must also show there is a realistic expectation that the type of work sought is available on a short-term basis. A claimant may have to accept work in another occupation if short term employment is not customary in his regular occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must be available and willing to commute within reasonable commuting patterns for his occupation and community. The claimant must show that he has reasonable access to transportation, whether public or private. Acceptable means of transportation include: walking, bicycling, public busses, taxis, private vehicles including motor bikes and scooters, riding with friends, relatives, co-workers or in car pools. If the claimant used means other than private transportation in order to earn wage credits, availability is established for as long as there exists a labor market available to the claimant within his ability and willingness to commute.

(b) Removal to a Locality of Limited Work Opportunities.

The individual who moves from an area of substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which he is qualified and willing to perform. If the work which the claimant can and will perform is so limited in the new locale that he has little expectation of becoming reemployed, his continued unemployment is the result of the move and not the failure of the labor market to provide opportunities for employment. Once this has been established, after the claimant has had an opportunity to explore the labor market, he is no longer eligible for benefits because he has removed himself from the labor market. If a claimant moves to an area where there is no work which the claimant can do, benefits shall be denied immediately.

(9) Retirement.

(a) When a claimant is retired there is a presumption of withdrawal from the labor market, regardless of the reason for the retirement, because a retired claimant may have fewer incentives to work than other claimants. Circumstances which cause a presumption that a retired individual lacks attachment to the work force are:

(1) income sufficient to meet financial requirements,

(2) income or retirement penalties which motivate against substantial employment,

(3) intended uses of leisure time including hobbies, travel, civic or church responsibilities,

(4) the absence of a plan and program for becoming employed consistent with realistic opportunities for employment of a retired individual,

(5) personal circumstances of the claimant's spouse,

(6) health,

(7) consistency, intensity, and reasonableness of efforts to obtain work.

(b) If the retired claimant can show by his actions that he is genuinely interested in obtaining employment and he is actively seeking work, benefits may be allowed provided he meets other requirements for eligibility.

(10) Other Restrictions.

(a) School.

A claimant attending school who has not been granted "Department approval" must meet all requirements with respect to being able, available and actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his school schedule, if necessary, to accept work, must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he were to withdraw.

A presumption of non-availability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which he could reasonably expect to obtain.

(1) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. An age certification issued by the school merely gives correct age, not authority to work. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) During school hours except as authorized by the proper school authorities,

(b) Before or after school in excess of 4 hours a day,

(c) Before 5:00 a.m. or after 9:30 p.m. on days preceding school days,

(d) In excess of 8 hours in any 24 hour period,

(e) More than 40 hours in any week.

(b) Domestic Obligations.

(1) When a claimant has an obligation to care for children or other dependents, he must show that other arrangements for the care of those individuals has been made for all hours that are normally worked in the claimant's occupation and must show a good-faith, active work search effort.

(2) Following childbirth, there is a period of time when the need or desire to care for the newborn infant is stronger than the desire or need to work. Since an infant cannot be left without proper supervision, it is presumed that the mother has the obligation to care for the infant and she is not available for work until arrangements are made for the child's care. A re-entry into the labor market is not established until the claimant has indicated a desire to re-enter the labor market by making all necessary physical and mental adjustments, and other arrangements, to enable her to work and she has demonstrated this by beginning a good faith, active search for work. The claimant must also be willing to accept work at a wage consistent with Subsection R994-403-117c(4), even though faced with additional child care expenses.

R994-403-118c. Work Search.

(1) General Requirements.

The Employment Security Act requires, by direct statutory language, that a claimant must act in good faith in an active effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community. What constitutes an active good faith search for work for a professional person, may be different from the active good faith search for a non-professional person. It may not be appropriate for professionals to call in person upon prospective employers without first submitting resumes and making an appointment by phone. However, in the case of a non-professional, unannounced personal contacts are appropriate and acceptable.

(2) Active.

An active effort to look for work is generally interpreted to mean that a claimant should contact, in person, a minimum of two employers not previously contacted each week who would hire people in the occupation which the claimant has work experience or would otherwise be qualified and willing to accept employment. Although the minimum number of contacts required by the Department without specific instructions is two, individuals genuinely desirous of obtaining employment will generally make a work search in excess of the minimum requirement. Because the primary obligation of the claimant is to become re-employed, not merely to comply with the requirements of the Department, claimants are encouraged to develop a realistic plan for becoming re-employed which may mean making more than the minimum number of contacts. However, Department representatives, after taking into consideration the type of work the claimant is seeking and the opportunities available for contacting employers who could reasonably be expected to hire in those occupations, may

individually advise claimants of a specific number of in-person contacts the claimant is expected to make each week. The Department may not assign varying number or types of contacts for claimants in the same occupation or locality, as work search requirements should be consistent for all claimants in similar occupations unless unique circumstances warrant a reduction in the requirement. Failure of a claimant to make at least the minimum number of in-person contacts as instructed by a Department representative shall create a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he has pursued a job development action that would be at least as likely to result in employment as the specific minimum number of employer contacts given him by the Department representative. Reading the classified section of the newspaper, canvassing employers indiscriminately by telephone, writing resumes, contacting friends or church representatives, or looking at the bulletin board in the Employment Center, do not replace the need for in-person contacts because they do not allow the claimant to complete a work application or to be immediately considered for hire.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if sincerely desirous of obtaining employment. A good faith effort is not established simply by making a specific number of contacts to satisfy the Department requirement. A good faith effort requires that the claimant, when contacting employers, emphasize his interest in the job and conduct himself in such a way as to provide the maximum possibility of his being considered for hire. He should contact employers at the designated time, place and in the manner specified. He should be dressed and groomed appropriate for type of work he is seeking and present no unreasonable restriction on acceptance of the work. Answers on employment applications should be reasonable, honest, show a genuine interest in obtaining employment, and emphasize those skills, experience or aptitudes which the claimant has that are consistent with the job requirements. Contacts should be made directly with persons having the authority to hire.

(4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b). When a claimant is deferred, it is because he has reasonable prospects of employment through the union and his union attachment puts him in contact with the majority of the employers he normally would be expected to contact. Therefore, for those claimants who meet the qualification for deferral, the union attachment is an acceptable substitute for a personal work search.

(b) If the claimant is not in a deferred status because he did not earn substantially all his wage credits in employment as a union member or the deferral has ended, he must meet the requirements of an active, good faith search for work by personally contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting non-union employment.

R994-403-119c. Extended Benefit Requirements.

Extended benefits are those additional benefits paid in times of high unemployment. Claimants filing for extended benefits established under specific state or federal programs are required to be available under different conditions and make a more extensive work search effort than is required of claimants receiving regular program benefits. Disqualification for failure to meet the work search requirements are made in accordance with extended benefit rules established under Sections 35A-4-402 and R994-402-201 through R994-403-113. Other special programs may be governed by various sections of the Act or federal public laws.

R994-403-120c. Burden of Proof.

Proof of eligibility for benefits is the responsibility of the claimant. The claimant has an obligation to report any information that might affect his eligibility and provide any information requested by the Department which is required to establish that he is able, available, and actively seeking work. He must keep a detailed record of the employers contacted each week for which benefits are claimed. The records will include the company name, address and telephone number, date of contact, type of work, name of the person contacted, and the results of the contact.

R994-403-121c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. When the claimant has demonstrated that he is not able or available for work or actively seeking work, there may be a presumption that the circumstances will continue and an indefinite disqualification may be assessed. This disqualification shall end when the claimant establishes that conditions have changed and he meets the requirements for eligibility. A claimant may have his eligibility under Subsection 35A-4-403(1)(c) of the Act reconsidered on a weekly basis by reporting to the local office and requesting a reassessment of his eligibility following a disqualification.

(2) If lack of a good faith work search is established with regard to prior weeks, a disqualification will be for only the weeks in which the work search was inadequate and not in excess of four weeks preceding the interview unless benefits were allowed on the basis of false reports by the claimant of work search contacts. The Department shall disqualify all weeks in which it is discovered that a claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-122e. Failure to Furnish Information.

Fundamental to the proper administration of the Unemployment Insurance Program is the gathering and exchange of information. When a claimant or employer cannot or will not provide information, proper determinations with regard to the claimant's eligibility cannot be made. The failure of the claimant to provide information may come at various times during the benefit year, and to avoid improper payments, benefits must be denied under Subsection 35A-4-403(e) until the information is provided. Where time limitations are not prescribed by law, the claimant and employer must be allowed a reasonable amount of time to provide the information

requested by the Department.

R994-403-123e. Period of Disqualification.

For failure to provide wage or separation information or any other information identified at the initial filing of the claim, the disqualification period begins with the effective date of the claim. All other denials will begin with the week in which the allotted time for responding ends. In all cases, the disqualification will continue until the Saturday of the week prior to the week in which the claimant provides the information or contacts the Department to make arrangements to provide the information, whichever is first.

R994-403-124e. Good Cause.

No disqualification or penalty will be assessed under this provision of the law if the claimant or employer can show good cause for failing to provide the information within the time-frame as requested. Good cause, as it applies to this section of the law, may be established if the claimant or employer makes reasonable attempts to provide the information within the time-frame requested, or the claimant or employer was prevented from complying due to circumstances which were compelling or beyond their control.

R994-403-125e. Information Claimants Must Provide.

(1) Utah law requires that the claimant's weekly benefit amount be computed based upon his total wages for insured work during his base period. The wage information must be requested from employers based on the employment reported by the claimant. The claimant has failed to provide information necessary to establish his claim if he does not list all base period employers and provide the correct business name and address for each employer listed. If, after being found monetarily ineligible, he subsequently identifies sufficient additional employment to establish a claim, the monetary determination will be revised to include the additional employment and benefits may be allowed under Subsection R994-403-125e(2) after the disqualification period.

(2) Claimants must provide information which is needed to determine eligibility as requested on the initial claim form, or on any other official document of the Department. Claimants are required to correctly report the reasons for separation from past employers when filing a new claim, reopening a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation. Information with regard to work search and other availability restrictions may be requested by the Department on a regular basis. Claimants may be required to provide documentary information, including medical reports, class schedules and school grades.

(3) Benefits may also be denied when claimants fail to report at the time and place designated for an in-person interview with a Department representative which is necessary to determine claimant eligibility or make job referrals.

R994-403-126e. Wage Information.

It is the employer's responsibility to report correct wage information. The claimant may be requested to supply wage information. However, since it is not the claimant's responsibility to report wage information, no disqualification will be assessed for failure to do so under Subsection 35A-4-403(1)(e).

R994-403-127e. Reporting Incorrect Information.

Providing incomplete or incorrect information shall be treated the same as a failure to provide information if the incorrect information results in an improper decision with regard to the claimant's monetary or non-monetary eligibility. This includes failure to report or list all work search contacts as requested at eligibility interviews or on written documents.

R994-403-128e. Overpayments.

If benefits have been improperly allowed based on the claimant's failure to provide information, or based on incorrect information provided by the claimant, the resultant overpayment may be assessed in accordance with Subsection 35A-4-406(4).

R994-403-129e. Employer Penalty.

If the employer fails to provide wage information as requested on Form 625, or separation information as requested on Form 606, he relinquishes his rights with regard to the affected claim and ceases to be an interested party with respect to that claim. The employer may raise questions concerning the claimant's eligibility with the Department which may then choose to exercise continuing jurisdiction with respect to the claim, under Subsection 35A-4-406(2) The Department may subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. The employer will not be eligible to appeal decisions with regard to the claimant's right to benefits and relief of charges resulting from payments to that claimant will not be granted. However, if the Department exercises continuing jurisdiction and denies benefits, any overpayment established and collected will be credited to the employer's benefit ratio account.

R994-403-131g. Eligibility for Benefits and Requalifying Wages - General Definition.

When establishing a new claim, a claimant may have unused wage credits sufficient to establish monetary elibibility for a subsequent claim. However, before benefits may be paid on the subsequent claim, a claimant who has received during the first benefit year must have worked since the beginning of that benefit year.

R994-403-132g. Subsequent Employment in Insured Work.

Each of the following three elements must be satisfied to meet the requirements of Subsection 35A-4-403(1)(g):

(1) Work must have been performed after the effective date of the original claim, but not necessarily during the benefit year of the original claim.

(2) Actual services must have been performed, not just the establishment of insured wages attributable to a period of time subsequent to the effective date of the original claim including vacation, severance pay, or a bonus.

(3) Earnings from insured work must be equal to at least six times the weekly benefit amount of the original or subsequent claim, whichever is lower. Insured work is employment subject to state or federal unemployment insurance

programs, including railroad employment and active military duty. Active military duty includes any duty authorized by military orders, even if insufficient to monetarily qualify an ex-service member for a claim totally based on military wages.

R994-403-133g. Period of Disqualification.

(1)If a claimant satisfies the requirements of monetary eligibility under Subsection 35A-4-403(1)(f) he may establish a new claim. However, benefits shall be denied under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of insured earnings equal to at least six times his weekly benefit amount.

(2) Exception to Disqualification

The provisions of Subsection 35A-4-403(1)(f), do not apply unless the claimant actually received benefits during the original benefit year.

R994-403-201. Department Approval - General Definition.

Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. The Employment Security Act limits the extent to which unemployment funds may be expended on behalf of claimants who need training. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

R994-403-202. Request for Department Approval.

Department approval shall not be granted unless a claimant would be disqualified under Subsection 35A-4-403(1)(c) due to school attendance. After it has been determined the claimant's school attendance is disqualifying under Subsection 35A-4-403(1)(c) he must submit a written request before Department approval shall be considered.

R994-403-203. Availability Requirements.

If Department approval is granted, the Act provides relief from the requirement to seek and accept work after the training begins. A claimant must make a work search prior to the onset of training, even if he has been advised that the training has been approved. However, a claimant shall not be required to conduct an active work search each week while in school or during the break period between successive terms as long as that break period is four weeks or less. A claimant attending approved schooling shall be placed in a deferred status and shall not be required to register for work. In addition, benefits shall not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the Act. Absences from school shall not result in a denial of Department approval if a claimant can demonstrate he is making up any missed work and is still making satisfactory progress in school. For the purposes of the subsection, satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing or certification, as appropriate.

(1) A disqualification under Subsection 35A-4-403(2)(a) shall be effective with the week the claimant knew or should have known he was not going to receive a passing grade in any of his classes or was otherwise not making satisfactory progress in school. The Department shall instruct the claimant at the time Department approval is granted that it is his responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress. This includes incomplete work, unsatisfactory test scores and mid-term grades. A claimant also has the responsibility to report any sickness, injury or other circumstances that prevented him from attending school. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status, as defined by the educational institution, shall not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, he is again attending class regularly and making satisfactory progress.

(2) A claimant shall be ineligible for Department approval if he is retaking a class that was originally taken while he was receiving benefits under Department approval. However, if Department approval was denied during the time the course being taken was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate he is making satisfactory progress.

R994-403-204. Qualifying Elements.

All of the following elements must be satisfied for a claimant to qualify for Department approval of training:

(1) The claimant's unemployment is chronic or persistent due to ANY ONE of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i) Has a history of repeated unemployment attributable to lack of skills,

(ii) has no recent history of employment earning a wage substantially above the federal minimum wage,

(iii) has had no formal training in occupational skills,

(iv) does not have skills developed over an extended period of time by training or experience, and

(v) does not have a MARKETABLE degree from an institution of higher learning, or

(b) A change in the marketability of the claimant's skills has resulted due to new technology, major reductions within an industry, or

(c) Inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) A claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work he is being trained to perform, or course of study he is pursuing,

(b) sufficient time and financial resources to complete the training,

(3) The training is provided by an institution approved by the Department,

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months. However, it is recognized there are special circumstances where a longer course may be essential to achieve the purposes of a particular state or federal program.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters or similar periods of academic training necessary to obtain a degree. However, it is again recognized that due to the particular requirements of a special program, training which is not vocationally oriented may be approved beyond a two term limit.

(7) A claimant did not leave work to attend school, except as permitted under special state or federal programs, even if the employer required the training for advancement or as a condition of continuing employment,

(8) The schooling is full-time, as defined by the training facility.

R994-403-205. Requirements for Continuation.

Initial approval shall be granted for the school term beginning with the week in which the attendance was reported to the Department. Continued approval may be granted by the Department if the claimant establishes proof of:

(1) Satisfactory attendance,

(2) Passing grades,

(3) Continuance of the same course of study and classes originally approved, and

(4) Compliance with all other qualifying elements.

R994-403-206. Waiver of Requirements.

Exceptions to the Requirements for Department Approval.

(1) The requirements for Department approval may be waived or modified when required by state or federal law for specific training programs.

(2) Short Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-204 if the training is for eight weeks or less. This is intended as a one-time approval and may not be extended.

KEY: filing deadlines*, registration*, student eligibility, unemployment compensation
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R994. Workforce Services, Workforce Information and Payment Services.

R994-404. Wage Freeze Following Workers' Compensation.

R994-404-101. General Definition.

The purpose of this provision is to extend the protection of the unemployment insurance program to individuals who, because of the period of illness or injury that was the result of a work related incident insured by a Workers' Compensation and Occupational Disease Program, may not have qualifying wages in the calendar quarters designated by the statute as the base period. The term "freezing of base period wages" comes from the ability to use employment and earnings from an earlier base period.

R994-404-102. Qualifying Elements to Use Wages Outside Normal Base Period.

(1) To be eligible to use wages from calendar quarters that began prior to the normal base period, all of the following elements must exist:

(a) the claimant must have been off work due to a job related illness or injury,

(b) the claimant must have filed for and been determined eligible to receive compensation for the illness or injury under a qualifying Workers' Compensation or Occupational Disease Program of the State of Utah or a Federal Program.

(c) the initial claim for unemployment insurance benefits must have been filed within 90 days after he was released:

(i) by his medical consultant to return to full time work (this does not include release to limited or light duty work), and

(ii) following a continuous period of sickness or injury; and

(d) the unemployment insurance claim must have been filed within 36 months of the week the covered injury or illness occurred.

(2) At the time the claimant is released from the doctor and reports to the Department to file an unemployment insurance claim, the claimant may elect to continue an existing claim or cancel the existing claim. If he cancels the existing claim, he may file a new claim using wages paid during the first four of the last five completed calendar quarters prior to the date of his illness or injury that caused the claimant to leave work and file for worker's compensation. If the claimant elects to continue the existing claim, it cannot later be canceled in favor of the wage freezing provisions even within the 90 days, nor will the wage freeze provisions apply to any subsequent claim. If a prior claim is canceled, no overpayment will be established even if payments have been made.

R994-404-103. 90-Day Filing Limitation.

(1) The 90 day time limitation for filing an unemployment insurance claim following an insured illness or injury means 90 calendar days after the claimant was released for full-time work by his doctor, not the end of the period of coverage under workers' compensation. Regardless of the day the claimant contacts the Department to file a claim, the effective date of the eligible claim must be within the 90 days. For example, if the 90th day falls on Wednesday and the claimant files a claim on Thursday, the effective date of the claim would be Sunday of that calendar week and would fall within the 90 day time limitation.

(2) Good Cause for Filing Beyond 90 Days.

The only exception to the requirement to file within 90 days of unemployment following the release would be if good cause can be shown. However, good cause in such cases is limited to circumstances where competent evidence shows substantial confusion as to the actual date the individual was released to return to work or the claimant was prevented due to circumstances beyond his control from filing his claim. Lack of information about the provisions providing for the freezing of wages because of the claimant's failure to inquire about such provisions, or the employer's failure to provide information does not establish good cause for failure to file within the 90 day period.

R994-404-104. The Effective Date of the Claim.

The effective date of the claim for benefits shall be the Sunday of the week in which the claimant makes application for benefits. Although the Act provides for the protection of the benefit year, it does not extend coverage to the weeks that were not filed timely, in accordance with provisions of Subsection 35A-4-403(1)(a).

R994-404-105. Base Period Wages.

The claimant has only two options. He can file a claim using wages paid during the first four of the last five completed calendar quarters prior to the week he files a valid claim, or he can use those wages paid during the first four of the last five completed calendar quarters prior to the date of his illness or injury that caused the claimant to leave his work and file for workers' compensation.

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